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Crime and Justice

An Australian Textbook in Criminology

Edited by
Andrew Goldsmith
Mark Israel
Kathleen Daly

Second Edition

CRIME AND JUSTICE

AN AUSTRALIAN TEXTBOOK IN CRIMINOLOGY

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PREFACE

For many years, students taking introductory courses in criminology and criminal justice at Australian universities were forced to use American or British textbooks which, not surprisingly, made no allowance for the circumstances of crime and criminal justice in Australia. Students were confronted with a welter of concepts – "due process", "the Miranda rule," "the British welfare state," "capitalist oppression", and so on – that lacked obvious relevance to the Australian setting or which used language that had little or no currency in Australian usage. The result was that students (who were not confused or turned off by this situation) would know more about crime patterns in Chicago than in Sydney or Melbourne. They could also be better informed about how to "plead the Fifth Amendment" in an American interrogation room than about the rights of accused persons in Australian police stations. While there is nothing wrong in Australian students of criminology and criminal justice knowing something about other countries' systems and experiences, they should also be familiar with their own system and local forms of crime. Most Australian students will, at least initially, seek employment in Australia so that an appropriate education related to the Australian context is of the utmost importance.

The situation changed dramatically, and for the better, in 1996 with the appearance of Kayleen Hazlehurst's *Crime and Justice: An Australian Textbook in Criminology*. An edited book, it contained 17 commissioned chapters by Australian-based criminologists and dealt with a wide range of criminological and criminal justice topics. These chapters typically drew extensively on Australian data and experience, and sought to relate concepts and theories from criminological thought in a range of countries (including Australia) to a diverse array of Australian problems and issues in this field. The layout of the book also set a precedent in Australian criminology books intended for student use, incorporating photographs and cartoons into the text. From a teacher's perspective, the book was user-friendly in that it provided a set of "issues and questions" at the end of each chapter that could be used for class and tutorial group discussion. The orientation of the book as a textbook, and an introductory one at that, was an important step forward in the expanding field of higher education in Australian criminology and criminal justice. Not only did it offer a nationally oriented set of materials to our students, but it also took their pedagogical needs more seriously than any previous Australian criminology book (see Israel

1997). Other collections of essays and articles had appeared since the early 1970s, but none had taken on the challenge of writing in a way that was both comprehensive in its coverage of topics and accessible to first year students in the field. In most instances, these other criminology books stood as reference works for postgraduate students and academics. In fairness, this situation reflected the fact that until the early 1990s, criminology and criminal justice education in universities mainly took place at the postgraduate level. The situation has dramatically changed since then, with large undergraduate programs and topics in the field starting up at universities around the country. Hence, the first edition of *Crime and Justice: An Australian Textbook in Criminology* was timely and popular.

As teachers in the field at Australian universities, we had become familiar with the first edition. Indeed, two of us had prescribed it to students over a number of years. We had come to appreciate its many strengths as an introductory textbook. However, even good textbooks can be improved, and in any event, have a natural lifespan. New topics, new perspectives, and, perhaps more importantly, new data and phenomena, emerge that require consideration in an up-to-date book intended to introduce students to a field of study and learning. As beneficiaries of the legacy left by Kayleen Hazlehurst's earlier edition, we are also fortunate to have the opportunity to build upon and extend the student-friendly aspects of the book. In this edition we have introduced "key words," further readings, and "useful websites" for each chapter, in addition to discussion questions and bibliographies. The website reference feature is one reflection of how higher education has changed since 1996, and of how much important and relevant information is now available to students in criminology and criminal justice through the Internet. There is also a combined glossary of criminological and criminal justice terminology, intended to serve as a general reference facility.

Overall, our goal for the book is to provide a foundation of *criminological literacy* for students coming to the field for the first time. It is easy for newcomers to be overawed by the range of disciplines and perspectives that are linked to criminology and criminal justice. Scholars sometimes suggest that criminology is not a "real" discipline in the same way, for example, that psychology or philosophy is. They point to its diversity of theoretical positions and research methods (see Downes & Rock 1998; Garland 1997). Some are not comfortable with the eclecticism and pluralism they find (for example, Savelsberg & Sampson 2002). By contrast, as persons researching, writing, and teaching in the field, we find many exciting opportunities for scholarship in this very same diversity and eclecticism. Nonetheless we recognise the need to assist new students who enter this field by familiarising them with a wide range of terms, concepts, and perspectives that will enable them to orient themselves to scholarly works, public debates and policy developments that deal with crime and justice issues, and that will prepare at least some of them for further studies in the field. We have therefore sought to standardise each chapter contribution by asking authors to be conscious of the target audience in the choice of language, to use Australian examples as much as possible in explaining points, and to provide clear explanations of glossary terms and key words.

Readers will therefore discover no single approach taken by the book as a whole to understanding the field of criminology and criminal justice. In the first place, one cannot impose discipline of this kind upon such a large and diverse array of criminological scholars as is represented in this book. Nor should one attempt to do so if open-minded inquiry remains important, which, in our view, it does. In what for many is a field rather than a discipline, it is preferable to present a range of approaches to studying and understanding the field. Students will therefore discover a range of theoretical perspectives adopted by contributors who themselves come from a variety of disciplinary backgrounds, including sociology, law, politics, psychology, social work, and statistics. These differences reflect criminology's status as a rich and diverse field of study.

Close observers will see other differences from the first edition. Each chapter has been freshly commissioned; there is no "revision" or "updating" of the contributions to the earlier book. This means that the list of contributors is quite different. In part, this has arisen from the editorial team's decision to enlist the contributions of those known personally to us, whose work we admire, and whom we know to be currently involved in teaching undergraduate criminology or criminal justice courses in Australian universities. This has meant that the contributors include some "new players" as well as some "usual suspects" in Australian criminology. Practically speaking, it also reflects those who were available and interested to contribute to a venture of this kind. Current pressures upon academics in Australian higher education to publish refereed articles and scholarly monographs rather than to produce good undergraduate textbooks can make it more difficult to do a book of this nature. However, despite these external pressures, we are especially pleased with the number and calibre of persons who agreed to contribute, and whose chapters appear in this volume.

The book is organised into three parts. The first deals with the *nature of crime*. It examines different ways of defining crime (Israel), how much crime there is, and where it can be found (Morgan), and how crime is represented in the media (Bloustien and Israel). The second part looks at the *different ways in which we understand crime*. Eight separate chapters look at explanations for and/or types of crime. Some look at different approaches to studying crime – those focusing on the individual offender (Stewart and Wortley), and those looking at social explanations for crime (Halsey; Lincoln and Daly). The other chapters look instead at different geographical locations in which crimes occur. Thus, we look at crime in the streets (Ross and Polk), crime in the executive office suites and workplace (Sutton and Haines), crimes related to the home (Stubbs), crimes in cyberspace (Grabosky and Smith), and transnational crime and terrorism (Goldsmith). The third and final part looks at *different aspects of criminal justice*. These chapters examine the principal institutions of criminal justice, as well as at the aims and philosophies behind them (Daly). Thus, policing and law enforcement (Goldsmith), pre-trial, trial and sentencing processes (Henning and Warner), imprisonment (Dawes), community-based corrections (Howells and Heseltine), crime prevention (Cherney and Sutton), and the position of victims (Israel) are examined.

Despite there being 18 chapters and a wide range of topics investigated, there are inevitably some areas that are not covered at all, or in much depth. For example, there are no specific chapters dealing with juvenile justice, national organised crime, private security, or Indigenous persons. While conscious of this fact, producing an introductory textbook requires some limits on practical and financial, if not scholarly, grounds. We hoped that by dealing with some crimes spatially as well as in more conventional terms, we would ensure greater coverage than the chapter headings might otherwise indicate. In this way, for example, we have sought to deal with "crimes of the powerful" (Chapters 8, 10, and 11). The historical and contemporary experiences of Indigenous people in Australian criminal justice and social welfare institutions are dealt with in a several chapters, including Chapter 6, which looks at the question of inequality in relation to gender, race-ethnicity, and class, and Chapter 10, which examines prison and imprisonment.

The following friends and colleagues have contributed to the book in a variety of ways: Brigitte Bouhours, Peter Grabosky, Steve James, Colleen Lewis, Melanie McDermott, John McFarlane, Rebecca Matthews and John Myrtle.

Finally, we once again wish to acknowledge the contribution to teaching Australian criminology made by Kayleen Hazlehurst and her team of contributors in the earlier edition. We are grateful to Kayleen and to Lawbook Co. for the opportunity to build upon that earlier work in the way that we, together with our team of contributors, have done here.

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Chapter 1

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Chapter 9

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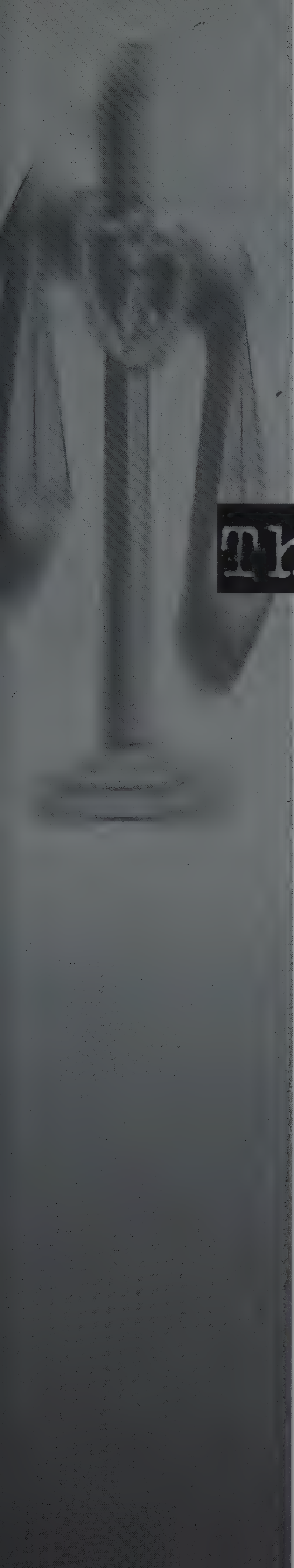

PART 1

The nature of crime

1 **What is Crime?**
Israel

2 **The Extent and Location of Crime**
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CHAPTER 1

WHAT IS CRIME?

Mark Israel, Flinders University of South Australia

KEY WORDS

- Criminalisation

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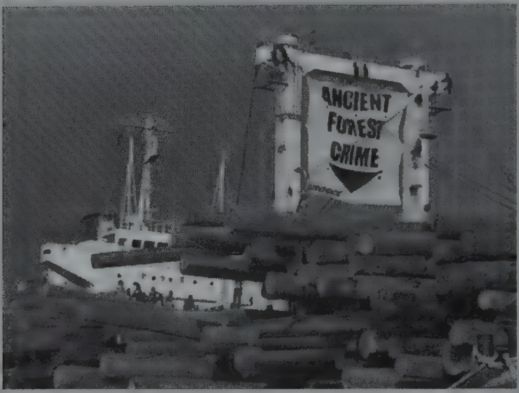
INTRODUCTION

We might have expected members of society to have reached agreement about what we mean by the term "crime". There is however little consensus and, if we think about the various ways in which the term is used, we can begin to understand why. Turn on the television or radio news or open a newspaper and list those stories that deal with crime and those which do not. Some are very obvious: there may be an article about a murder in the suburbs that police are investigating or a piece on the trial of an armed robber. We may accept that these are stories of crime because we know that murder and robbery are crimes and our view is confirmed by the fact that institutions of criminal justice – in these cases the police and the courts – are responding to those acts. However, some examples are not so clear-cut.

Consider a story on forestry that describes confrontations between loggers and environmental activists, or another piece on a member of a militia who reveals that his organisation has stockpiled weapons. Perhaps there is a story on a politician's offshore bank account that appears to hold public money. Are these *criminal* matters or not? Would it matter if these stories were in the international section of the newspaper and the environmental activist was Brazilian, Thai or Indonesian and was protesting against tropical rainforest clearance, or if the militia member was American, Afghani or Palestinian? What factors influence the criteria that shift some behaviours into the realm of criminal?

The point is that crime, the criminal justice institutions and the people who work in those institutions do not exist in a vacuum. Each is a fundamental part of society and cannot be separated easily from the way in which the wider society operates. Any attempt to make that separation would involve ignoring issues that are critical to an understanding of crime. How do we decide what is criminal? Who are the key players in the definitions that are finally adopted and acted upon by the criminal justice institutions? How and why do these definitions change between different places and over time?



May 2002, Greenpeace activists depict the activities of a Malaysian logging company in Papua New Guinea as "eco-criminal".

Source: Greenpeace/Davison

A DICTIONARY DEFINITION

The *Macquarie Dictionary* gives this definition:

"crime:
1. an act committed or an omission of duty, injurious to the public welfare, for which punishment is prescribed by law, imposed in a judicial proceeding usually brought in the name of the state
2. serious violation of human law: steeped in crime
3. any offence, esp one of grave character
4. serious wrongdoing; sin
5. colloq a foolish or senseless act: it's a crime to have to work so hard"

Is this a useful definition? Perhaps not, given that there are several areas that are not entirely clear in this definition. These concern the parameters of law, and the concepts of gravity, sin and senselessness (Muncie 2001). If a crime is an act punishable by law, are there no crimes that are not punishable by law? If a crime is a sin, what is a sin? Ideas about sin are highly controversial. If a crime is a grave or senseless act, who decides what is grave or senseless? For example, people may have different ideas about whether or in what circumstances it is acceptable for people to have sex outside marriage. These views are not randomly distributed throughout the Australian population, but may be related to age, ethnic background, time spent in Australia, region, religion, creed and gender. An 18 year-old woman may want to sleep with her partner, but that activity may be seen as quite shameful by her parents, or some of her friends, or her religious leaders but as perfectly acceptable by other friends, or her partner's parents. Some people may even go so far as to describe the act as a sin. Does that make it a crime?

A LEGAL DEFINITION

One way of dealing with the problem is to look at only those acts that have been defined as crimes by the criminal law. Paul Tappan (1947) described crime as "an intentional violation of the criminal law committed without excuse and penalised by the state".

Until the 1960s, such a criminal law definition was accepted uncritically by many criminologists. However, while the legal definition appears to be unambiguous, it does suffer from a number of problems. It strips crime of any moral dimension and ignores the social context within which both laws and human behaviour occur. Reliance on a legal definition of crime alone also suggests that something is a crime only when it violates a criminal law. If we accepted the criminal law definition, we would conclude that there is no crime without a criminal law and no crime without a state to make laws. Adopting this conclusion too hastily is unwise. One consequence of following a state definition is that it may make it difficult to argue that state institutions engage in criminal behaviour.

Fourth atom bomb test at Maralinga, 19 October 1956

Source: Newspix

For instance, successive Australian governments relocated the Anangu people to allow the British government to test nuclear weapons in the Maralinga Tjarutja lands, a vast tract in the north of South Australia. The first major test, Totem, was run in 1953. Aboriginal people were not advised to leave the area and little attempt was made to measure the levels of contamination to which different parts of the site were exposed. The Royal Commission into British Nuclear Tests in Australia was told in 1985 that several Aboriginal people died as a result. Significant numbers of cancers and genetic defects might have been caused by radiation from the nuclear explosions. The Royal Commission concluded that the loss of lands at Maralinga had contributed to the "emotional, social and material distress and deprivation" of the Anangu people. Was this a crime? No — if we relied solely upon legal criteria.

Dialogue Box 1.1

What is a Crime?

The Vietnam War involved the largest commitment of Australian armed forces since the Second World War. In 1965, a major force was dispatched, which increased in numbers until one third of all Australian combat forces were deployed to support the American and South Vietnamese armies against the communist National Liberation Front (NLF) and their allies in North Vietnam. By 1972, when the last Australian troops left, 50,000 Australians had served in Vietnam, including 17,000 conscripts. In all, 494 Australians died and 2000 were officially wounded during the conflict.

America's involvement in the Vietnam War included Operation Ranch Hand. Herbicides were applied to over 26% of all cultivated land, 20% of mangroves, and 2.67 million acres of inland forest. The use of herbicides was supposed to damage the NLF's food production and improve aerial surveillance. On the other hand, it breached the 1925 Geneva Protocol on Chemical Weapons (to which the United States was not then a signatory), and the 1952 Geneva Agreement prohibiting military involvement in Vietnam.

As a result of the spraying, 30% of the population of South Vietnam could not feed themselves and were forced to leave their villages and become refugees. Forests and mangroves were poisoned and the country's forests have still not fully recovered.

The operation may also may have damaged the health of thousands of American and Australian troops because the herbicides used included Agent Orange, a chemical manufactured in the United States by Dow Chemical. As a result of the production process employed by Dow, Agent Orange was often contaminated with another chemical called dioxin, a contaminant that could be dangerous to the health of anyone who was in the vicinity of Agent Orange when it was sprayed. A more expensive production process might have avoided dioxin contamination.

Questions

1. Were any crimes committed in Vietnam or the United States in these events?
2. How might the following people describe these events: Vietnamese peasants displaced by Operation Ranch Hand; Australian veterans suffering ill-health possibly caused by dioxin; environmental activists?
3. Who might object to calling these events criminal? Why? How might they stop these events being defined as criminal by the criminal law?

HUMAN RIGHTS AND SOCIAL HARMS DEFINITIONS OF CRIME

Since the 1960s, criminologists have become increasingly dissatisfied with the ability of the criminal law definition to come to terms with these sorts of questions. Some criminologists have adopted a human rights definition of crime. They argue that the criminal law definition forces criminologists to accept the official version of what was right and wrong, a version that changes over time and space. How can we compare crimes in different countries when different governments have created different definitions of crime, some of which include activities that might be perfectly acceptable in other societies?

The human rights perspective widens the definition of crime by looking at all activities that violate a code of human rights. For example, Richard Harding – an Australian criminologist – called for criminologists to work "to decrease the chances of extinction of [humanity] and the destruction of the planet" (1983, p 81).

Following this type of agenda, criminologists have examined some actions that rarely lead to criminal prosecution either because they are ignored by criminal justice agencies or because they come within the bounds of civil or administrative rather than criminal law. Criminologists have investigated economic activities such as tax evasion, price fixing, loan sharking and government corruption. In addition, Herman and Julia Schwendinger (1970) argued that criminology should also direct its attention to such aspects of social life as racism, sexism and imperialism, indeed, any activity which violates human rights. Stan Cohen (1993) argued that those with an interest in the criminal offences of murder, rape, espionage, kidnapping and assault might learn much by examining work on gross violations of human rights – genocide, mass political killings, state terrorism, torture and disappearances. Following this agenda, I looked at violence perpetrated by the South African state against the African National Congress in exile in the United Kingdom (Israel 1998).

The human rights perspective overcomes some of the limits of a narrow legal definition. However, it simply substitutes one set of definitions for another. In some cases, these new definitions can also be questioned. A human rights definition may be no more value-free or consistent than a criminal law definition.

More recently, some criminologists have extended their interest beyond competing definitions of crime to look at broader issues of social harm. As Henry and Milovanovic (1996) note, law offers only a very partial list of harms. For these two American-based reseachers, crime should be redefined in terms of "the power to create harm (pain) in any context" (p 118) (see Chapter 5):

> "This is why, from our perspective, much of what counts as business, governmental policy, hierarchical social relations, marriage, family and the state is crime. It is why homelessness can be a crime, why neglect of health and safety considerations is a crime, why sexual harassment and violence against intimates... are crimes. It is especially why child abuse is a crime... it is why emotional terror by employers over employees through at-will employment is a crime. Finally, it is why several of the actions of agencies of government are also crimes." (Henry & Milovanovic 1996, p 117).

Generally, those criminologists who have pursued the notion of social harm have recognised that the concept of crime cannot be captured in a single definition that remains constant over time. They are more interested in the ways in which notions of crime are contested, a matter that also lies at the heart of the social process approach.

A SOCIAL PROCESS APPROACH

A social process approach offers a third way of looking at crime. Advocates of this approach argue that we should not stick to criminal law or human rights approaches that define crime by listing the behaviours we do not like. Instead, proponents of the social process approach see crime as the result of social interaction. Using a social process approach, crime is the outcome of a process that involves the person who broke the rule and the reactions of others, including other citizens, the police, the courts and the law-makers. Yes, someone committed an act, but it was not what he or she *did* that made it a crime. This was achieved by a process of criminalisation. The way the act was perceived and reacted to by others, including agents of the law, made it into a criminal act (see Chapter 5 on the labelling perspective).

For those using a social process approach, crime is not something that exists naturally. Society creates crime because it makes the rules that have to be broken to constitute crime. So, when laws are created or reformed, the nature of criminal action changes. The social process approach has enormous consequences for the nature of criminological research. For Stan Cohen, it restored a political dimension to criminology by asking:

> "Why are laws made (not, self-evidently, to protect all but to serve particular political interests); Why do some people break laws (not, self-evidently, because these people are simply bad or because they cannot help themselves but for latent ideological reasons); How is the crime problem to be solved (not, self-evidently, by good-will and rationality but according to political choices and preferences)." (Cohen 1988, pp 13-14).

Rob White's (1990) research on the policing of youth in the centre of Adelaide offers a good example of this process. Hindley Street is located on the edge of the Adelaide Central Business District. It is a street of restaurants, hotels, bars, cinemas, arcades and other shops. Through the 1980s, large numbers of youths frequented the street. White found that there was little goodwill and much mutual distrust between the police and young people on the street, which he attributed to unnecessary intervention by police in the life of the street and over-reaction to provocation by youth. Tensions were particularly high between Aboriginal youth and police.

White explored some of Cohen's questions. He asked why particular rules were enforced strictly, and at particular times. He suggested that the attention the police paid towards Aboriginal youth intensified when various retailers and casino management called on police to clean up the street. He concluded that what we call crime may depend on the political process of the legislature creating criminal laws, the decision of police to enforce them, and the reactions of members of the community – and in particular strong economic groups.

CONCLUSION

John Muncie (2001), a British criminologist, has pointed out that the way that we choose to define crime reflects the way that we think about our society. If we believe that our society is based on agreement or consensus, then we are likely to view crime as the breach of national or international legal or moral codes. If we see our society as based on conflict, then it may make more sense to see crime as the result of a social or political decision to criminalise particular kinds of activities. In this chapter, we have looked at three different ways of defining crime – legal, human rights/social harms and social process approaches and the structure that we have followed is an adaptation of Muncie's work.

Given that the nature of society is contested, it is perhaps unsurprising that we have found it difficult to reach agreement on what we mean when we talk about crime. Indeed, as we suggest in the following chapters, this lack of consensus extends through much of criminology and there are significant debates among criminologists about how much crime there is or how we might measure it (see Chapter 2), what causes crime (Chapters 4 and 5), and what impact the media might have on the way that people understand crime (Chapter 3).

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CHAPTER 2

THE EXTENT AND LOCATION OF CRIME

Frank Morgan, University of Western Australia

KEY WORDS

- crime rate
- crime surveys
- dark figure
- institutionalist approaches
- police-recorded crime rates
- realist approaches
- routine activity theory
- sample

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INTRODUCTION

It is often said that police statistics about crime are unreliable, or biased. Some critics of police statistics look to survey data to find more accurate levels of crime, while others cast doubt on the validity of surveys as well. This chapter investigates the validity of crime statistics and presents alternative ways of interpreting them, recognising that crime statistics result not only from the behaviour of offenders, but also from the reaction to that behaviour by victims, bystanders and police. Measuring crime is necessarily linked with views of the nature and definition of crime (see above, Chapter 1).

Whatever one thinks about the quality of crime statistics, there is no reasonable way for criminologists to stand outside them. Patterns and trends in crime must be interpreted by using both crime statistics and other relevant information and the examples used in this chapter focus on crime patterns in space and time. The questions we ask about crime are deceptively simple. How much crime is there? How does it compare from one place to another? How much is it changing?

ORIGINS OF OFFICIAL STATISTICS

The history of published, centralised and national crime statistics began in France and the United Kingdom around 1830. The original statistics were based on court records, but were seen as indicators of crime or criminality. By the time that police-recorded crime statistics commenced in the United States in 1931, there was still debate as to whether court or police statistics were the best indicators of crime levels.

Australia

Australian prison and court statistics date back to the 19th century (Mukherjee et al 1985) but national statistics of crime recorded by police were not published until the mid 1960s. At that time, there was no official body responsible for their validation and publication and in 1989 it was impossible to disagree with the assessment of the National Uniform Crime Statistics Committee (1989, p 1) that:

> "Australian national crime statistics lag far behind statistics in other areas of social concern such as social security and education and compare unfavourably with other developed countries."

In 1993, the National Crime Statistics Unit within the Australian Bureau of Statistics published its first statistical report covering a limited range of offence categories (Australian Bureau of Statistics 2001). The collection had expanded a little by 2001 and the offences and their percentage contribution to the offence counts in the National Recorded Crime collection are listed in Figure 2.1 below. Property offences dominate the offence counts: unlawful entry with intent, motor vehicle theft and other theft contribute respectively 436,835, 139,094, and 674,813 offences. Violent offence counts are much lower, including 302 murders, 141,124 assaults, 23,314 robberies and 15,630 sexual assaults.

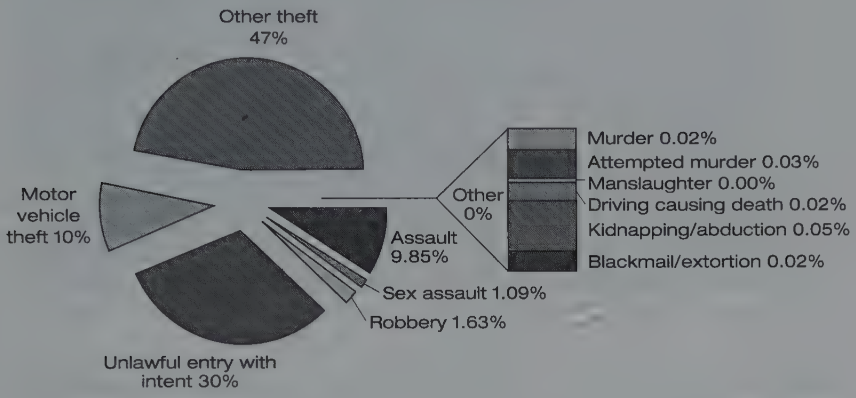


Figure 2.1 *National recorded crime 2000: Distribution of offences*

Source: National Crime Statistics Unit, Australian Bureau of Statistics

POLICE STATISTICS AND THEIR INTERPRETATION

Motor vehicle theft

We can use two offences, motor vehicle theft and assault, to show different approaches to statistical interpretation. Figure 2.2 below is based on national statistics of motor vehicle theft published by the Australian Bureau of Statistics (2001), and covers Australia, Tasmania, Victoria and Western Australia. Rate calculations are based on resident populations and the chart allows comparisons between jurisdictions, and also the assessment of trends from 1993 to 2000.

The Victorian rate of motor vehicle theft has increased by about 25% over the eight years covered by national crime statistics. While the Victorian rate has changed gradually, there have been large changes in the other two States. In 1993, Western Australia's motor vehicle theft rate was more than three times that of Tasmania and 60% above that of Victoria. However, at the turn of the millennium, Western Australia had fallen below these States and below the Australian average.

Trends and patterns in motor vehicle theft arguably represent genuine differences in offending behaviour, because most motor vehicle thefts are reported to police, and police record these thefts consistently and reliably.[1] Because of this, Figure 2.2 should be minimally affected by changes in the reporting of the offence to police, by changes in police recording practices,

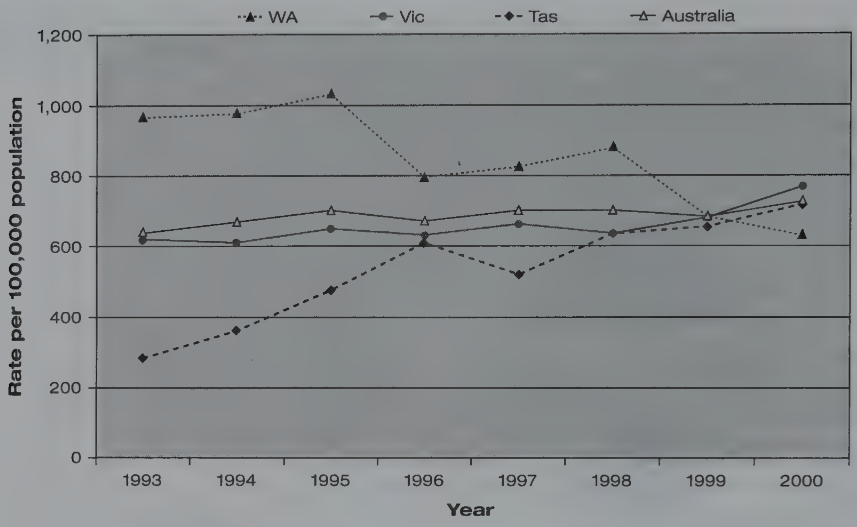


Figure 2.2 *Motor vehicle theft in three States and Australia: 1993-2000*
Source: Australian Bureau of Statistics

or by changes in legal offence definition. Interpretation of the data seems clear even though explanation is not necessarily simple. Western Australia introduced subsidies for the installation of vehicle immobilisers in 1997 and then made their installation compulsory in 1998. These initiatives have influenced the Western Australian trends but no simple explanation is apparent for the large rise in Tasmanian thefts.

Assault

Interpreting assault trends is a more complex task. Figure 2.3 below shows the increasing rate of non-aggravated assault in New South Wales between 1976 and 1988-1989, a trend which Bonney and Kery (1991, p 8) did not accept as evidence of changes in assaultive behaviour.

They drew random samples of police reports over the years of interest and conducted internal checks on the nature of assault data over time. After a careful analysis of the police records, Bonney and Kery concluded that the increase in non-aggravated assault statistics was largely due to

- increased willingness of police to report assaults against themselves;
- increased willingness of domestic violence victims to report assaults to police; and
- a small residual increase in recorded non-aggravated assaults.

Based on a careful analysis of the *processes* of reporting and recording, these authors interpreted the fourfold increase in recorded assault offences largely in terms of the *reaction* of victims and police to crime rather than as a change in violent behaviour.

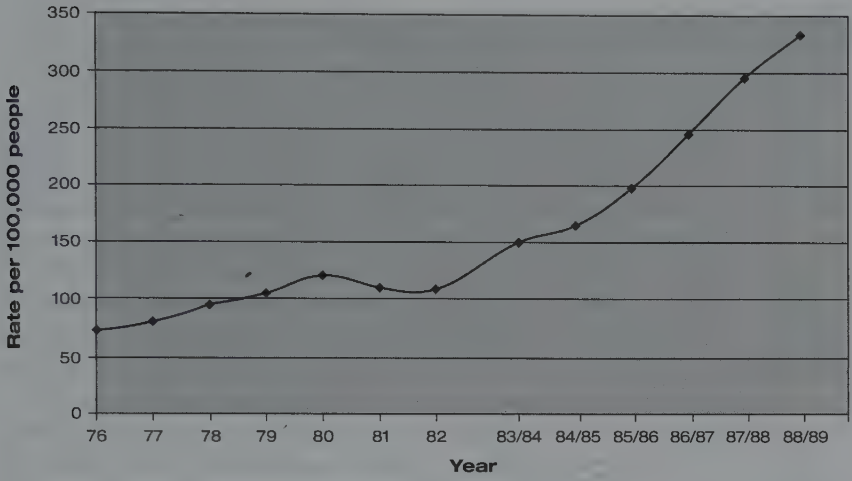


Figure 2.3 *Non-aggravated assault offences NSW, 1976-1988/1989*
Source: Bonney and Kery (1991, p 8)

These examples illustrate radically different approaches to the interpretation of crime statistics and two influential papers by Sellin (1932) and by Kitsuse and Cicourel (1963) help us understand the importance of both approaches.

Criminal behaviour and index offences: Thorsten Sellin

Because many crimes are not reported to police, police statistics cannot provide a generally satisfactory answer to the first question identified in the introduction: how much crime is there? However, the incompleteness of police records does not rule out their use for comparing crime at different places and times. A creative approach to the comparative task is evident in Thorsten Sellin's (1931) article on the crime index.

Sellin argued that certain *selected* offences were reliably reported to police and prosecuted vigorously. If a *crime index* were to be based only on these *selected* offences, the ratio of known to unknown offences would remain stable. Furthermore, trends over time and differences between jurisdictions could be reliably estimated, even if absolute levels of crime remained unclear. Sellin's focus was on understanding criminal behaviour rather than the reaction to crime and he argued that the examination of index offences could minimise differences in official reaction. The small count of index offences provided a better indicator of criminal behaviour than the large count of non-index offences because the latter were subject to variable reporting by victims and fluctuating levels of recording by police. In the United States, the Federal Bureau of Investigation (2000) uses the following index offences: murder and non-negligent manslaughter; forcible rape; robbery; aggravated assault; burglary; larceny-theft; motor vehicle theft; and arson.

Reaction to crime: Kitsuse and Cicourel

Kitsuse and Cicourel (1963) had a different focus. They were interested in who wins and who loses from the operation of the "system". Some criminologists criticised official statistics because they were not subject to rigorous social science definition, but Kitsuse and Cicourel argued that the processes of labelling and reaction by the public and the official agencies were central to crime. They *defined* certain acts to be deviant.

This approach to crime does not focus on index offences. On the contrary, less serious forms of deviant behaviour reveal most clearly the institutional processes that label some individuals rather than others as offenders.

Furthermore, official statistics *cannot* be incomplete, because they *define* the subject matter of interest and create the official rates that should be the subject of analysis. In other words, there can be no "dark figure" of crime because "crime-like" behaviour not coming to official notice is *not* crime. Official statistics thus assume a new respectability, but they must be interpreted as indicators of official reaction, rather than as criminal behaviour.

Contrasting approaches

Sellin and Kitsuse and Cicourel point to contrasting interpretations of criminal justice statistics, but some offences seem to fit one perspective rather than the other. For example, homicides, burglary and motor vehicle theft seem to be easily interpreted as statistics of *criminal behaviour* rather than institutional *reaction*. These are offences where police statistics are arguably good indicators of "real" levels of crime and there is evidence that the ratio of known to "unknown" offences is fairly fixed. On the other hand, other offences can more naturally be understood as official *reaction* to behaviour. Prostitution and street offences fall naturally into this category because they are "discovered" by police rather than reported by members of the public. Note, however, that crime statistics always result from some mixture of behaviour and reaction. Murder rates are often regarded as indicators of criminal behaviour alone but, over time, changes occur in the legal reaction to different forms of killing such as euthanasia.

CRIME SURVEYS

An alternative means of assessing crime levels, trends and patterns of victimisation is the *crime survey*. Surveys approach a population sample – individuals selected as representatives of a larger target population – and ask questions about crime, typically over the past 12 months. National surveys in 1993 and 1998 surveyed over 50,000 Australians.

Crime surveys enable us to get information directly from the public, bypassing the usual sources of information about crime. Because they are independent of police organisation, they offer a potentially more reliable way of making comparisons between different jurisdictions. They provide an independent "lay" definition of crime across jurisdictions where laws may differ. Trends revealed in crime surveys are not dependent on legislative change or on changes in police enforcement practices. Crime surveys were developed in the 1960s and the first National Crime Survey in the United States was undertaken in 1972. It has been run annually since then (Rand & Rennison 2002). Australia-wide surveys were run in 1975, 1983, 1993 and 1998. National and State surveys followed more frequently in the 1990s, but changes in survey methodology over these years make it very difficult to determine long-term changes in crime rates. The most consistent time-series of crime surveys is available for New South Wales, where property offences, but not violent offences, have been collected in a consistent format between 1990 and 2001.

The following examples of survey questions (Dialogue Box 2.1 below) are taken from the National Crime and Safety Survey, 1993 (Australian Bureau of Statistics, 1994).

Dialogue Box 2.1

Survey questions from the 1993 Crime and Safety Survey: Australia (Australian Bureau of Statistics, 1993)

Break and enter
In the last 12 months did anyone break into your home?

(Your home includes your garage or shed if you have one. It does nor include your car or garden)

Attempted break and enter
Apart from the break-ins already mentioned: In the last 12 months have you found any signs of an attempted break-in?

Motor vehicle theft
In the last 12 months, has a registered motor vehicle been stolen from any member(s) of this household?

(Include both privately owned and business/employer/company vehicles)

Robbery
Apart from those incidents mentioned already: In the last 12 months did anyone steal anything from you by threatening or attacking you?

Assault
Apart from those incidents mentioned already: In the last 12 months has anyone threatened you with force or attacked you?

Sexual assault (asked only of female respondents 18 and over – response is voluntary)

In the last 12 months have you been the victim of a sexual assault?

(Include all incidents of a sexual nature involving physical contact – rape, attempted rape, indecent assault, assault with the intent to sexually assault)

(Exclude sexual harassment that did not lead to an assault)

The survey methodology raises fundamental questions about the nature of crime, including:

- who has the authority to define events as crimes;
- whether or not an explicitly legal approach should be taken; and
- whether or not a crime can be defined regardless of the social context of its occurrence.

Some key differences between surveys and police records as sources of crime are summarised in Table 2.1 below.

Table 2.1 *Crime surveys and statistics of police-recorded crime: a simplified comparison*

Police statistics on recorded crime	Household crime surveys
Comprehensive approach to reported victims	*Selective approach to all crimes with crime*
All offences are covered including "victimless" crimes such as illegal drug use or offences against morality.	Only crimes with clearly defined personal victims (eg assaults, robberies, break and enter dwellings, motor vehicle theft – not drugs, drink driving)
Cover all reported offences in the jurisdiction of interest for the relevant time period: subject to *bias*.	Select a random sample of the population: subject to *random error and bias*.
Cannot cover offences which do not come to police notice.	Cover offences which have never been reported to police.
Cover offences against victims of all ages.	Cover only victims aged 15 and over in Australia
Basic unit of measure is the offence	*Basic unit of measure is the victim*
Basic counting unit is the *offence (or more fundamentally the report)*. Statistics represent the total number of offences (crime *incidence* statistics). Police systems are unable to report easily on the number of separate victims.	The basic counting unit is the *victim* (person or household) so the most natural measure is the percentage or number of persons or households victimised (crime *prevalence*). However incidence statistics can be generated as well.

Police decide if an offence has been committed Police decide not to record some events as offences even though they are initially reported as such by members of the public	*Survey respondents decide about events* The respondents to the survey decide whether or not they have been victims of the "events" covered by the survey – in the context of a particular survey instrument.
Crimes are reported as they occur Most offences are reported to police soon after they occur.	*Crimes are reported retrospectively* In most Australian surveys respondents are asked to recall crimes occurring within the past 12 months.
Legal definitions used Police use crime definitions that fit with criminal codes or the common law. code definitions.	*Non legal definitions used* Victims are asked to respond to categories that use everyday language and not criminal
Crime located at area of commission	*Crime assigned to victim's area of residence*
Date and time of offence usually precise	*Offence crudely located within a one-year block*
Small area coverage good	*Small area coverage poor*

It is sometimes claimed that surveys depict "real" levels of crime, but this interpretation is too simplistic. Everyday language replaces precise legal terminology, and because the respondents are not legal experts, survey questions are criticised for "missing the mark" in identifying genuine criminal activity. It can be argued that surveys *both*

- include events which are either not criminal (Hough 1990), or not in the identified legal category of crime (lay interpretations of "robbery" may be far removed from legal definitions), and
- omit some serious offences ostensibly within their scope, such as domestic assaults.

Thus, crime surveys have their own apparent "dark figure". The belief that assault questions, like the one listed above in Dialogue Box 2.1, do not elicit accurate responses to assaults against women, particularly domestic assaults, has led to the design of a new wave of surveys in Canada, Australia and the United States.

Nevertheless, independent survey measures of crime enable criminologists to look at trends and patterns from different viewpoints and to understand better *both* criminal behaviour *and* the way criminal justice agencies responded to such behaviour. Comparing surveys with police statistics helps us assess whether we should be more confident or more wary about the information provided by one source alone.

The crime survey provides the most important source of information about the validity of using certain offences in a crime index. Sellin had no solid empirical basis for assuming that the index offences were reliably reported to police and recorded by them. However, the 1998 Crime and Safety Survey (Australian Bureau of Statistics 1999a) provided information about this. The survey revealed that many assaults (72%), robberies (50%) and sexual assaults (67%) are *not* reported to police. On the other hand, motor vehicle theft (95%) and completed burglaries (78%) are reported to police at a high rate, whereas attempted burglaries are less likely to be reported (32%). Results such as these appear to undermine historical decisions to include assault and robbery in crime indexes.

Not only can crime surveys document the *extent* of public reporting to police, they can investigate the *reasons* why individuals report crime or fail to report it, and the demographic and contextual factors involved in reporting. The 1998 Crime and Safety Survey revealed that when assaults are not reported to police, it was mainly because victims regard them as too trivial (35%), or as a private matter, or as something they would take care of themselves (24%). These aggregate figures cover a range of contexts that can also be investigated by surveys. It is clear from the 1998 survey that the profile of assaults is very different for men and women. When assaulted, women are much more likely than men to know their assailant and to experience the assault in the context of the family or home. Furthermore, the survey revealed that only one in four incidents of family violence – assaults by partners, ex-partners and other family members – were reported to police.

Crime surveys are important in other ways as well. For example, they have provided information about the impact of crime on victims and about public attitudes to crime and criminal justice.

The crime survey represents an alternative, but still systemic way of defining crime and transforming the personal experiences of many individuals into a crime rate. Survey data are still influenced by the differential *reaction* of victims to crime as well as the levels of criminal victimisation they experience. Factors which affect survey responses include: the period of recall; the educational level of the respondent; the salience of the offence; the relationship between victim and offender; the design of the questionnaire; and its mode of administration (face-to-face or telephone interview, or anonymous completion of the questionnaire). Coleman and Moynihan (1996) provide an excellent summary of these selective properties and clarify the way that surveys represent an organised, institutional approach to crime measurement.

Institutionalists and realists

Biderman and Reiss (1967) argued convincingly that all crime statistics, whether based on surveys or official records, result from some institutionalised mechanism for defining, capturing and processing events as “crime”. *Institutionalists*, as defined by these authors, emphasised that crime can have valid meaning only in terms of an organised legitimate social response. The differences between the institutional mechanisms underlying survey and police statistics are outlined above in Table 2.1.

Police statistics rely on police to accurately assess, record and report on those events that come to their notice and they judge to be crimes. However, some institutionalists argue that these judgments are provisional and only court statistics can provide rates of legitimately adjudicated crime.

> "...the ultimate juristic view is that a given crime is not validly known to have taken place until a court finds someone guilty of that offence." (Biderman & Reiss 1967, p 2).

This approach contrasts with that of Sellin (1931, p 346), who argued that crime statistics should tap into the criminal justice process as early as possible because the processes of investigation, prosecution and adjudication could distort "true" patterns of crime. Biderman and Reiss described those concerned about distortion, incompleteness and bias as *realists*. They emphasised the degree to which crime statistics represent the level of crime that is "actually" occurring and were concerned about the *dark figure* of crime. For Biderman and Reiss, the dark figure comprised occurrences which could be defined as crime by some criteria but were not recorded in the statistics.

Realist and institutionalist perspectives on crime may not be incompatible despite their different emphases. The contrast between them is analogous to the contrast between criminal behaviour and reaction to that behaviour. However, even those with a single-minded focus on criminal behaviour need to understand the institutional processes that generate crime rates, in order to disentangle behaviour from institutional reaction. Bonney and Kery's analysis of assault trends, discussed earlier in this chapter, sought to simultaneously examine changes in behaviour and in reaction.

Survey results in Australia

Figure 2.4 below displays Australian rates of assault victimisation in 1998 as measured by a national survey (Australian Bureau of Statistics 1999a) and by recorded crime statistics (Australian Bureau of Statistics 1999c). Note that the survey rate is a *prevalence* rate per hundred persons, indicating the number of *victims* per 100 population, whereas the recorded crime rates are *incidence* rates, indicating the number of *assaults* per 100 population, even if multiple assaults are experienced by a single individual. Survey estimates of assault are far higher than indicated by the recorded crime statistics. The survey partially explains this difference in rates – only 28% of victims indicated they reported their last assault to police – however the differences are too large to be reconciled in this way (see Indermaur 1995).

The two sources of data also present different risk profiles of assault with regard to the age and sex characteristics of victims. For example, the highest rates of recorded assault are experienced by males aged 20-24, whereas the survey rates are highest for males aged 15-19. The survey provides the key to understanding this discrepancy, because it reveals that only 15.3% of males aged 15-19 reported their last assault to police, compared with 21.0% of males aged 20-24.

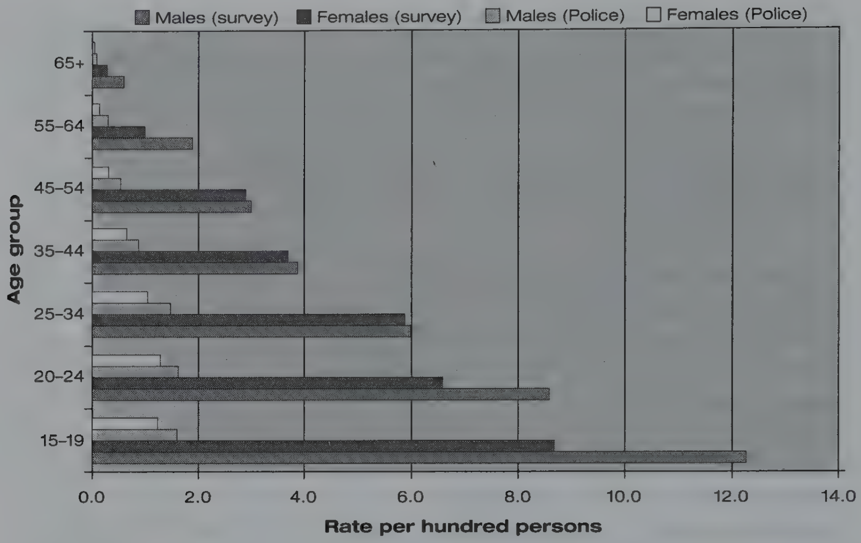


Figure 2.4 *Assault rates by age and sex of victim: survey and police records*

Source: Crime survey data: Australian Bureau of Statistics (1999a)
Recorded crime data: Australian Bureau of Statistics (1999b)

Note: Rates of recorded crime for victims under 15 have been omitted for simplicity of comparison

The survey is able to provide much more detail about victimisation risk factors than police records. Furthermore, it can support sophisticated statistical analysis because it collects information on both victims and non-victims of crime. For example, for household break and enter offences, the 1998 national survey was able to generate a logistic regression analysis of risk factors that would not have been possible using police statistics. The results of this analysis showed that single parent households faced the highest victimisation risks, and that households were at greater risk of break and enter if they lived in dwellings next to laneways or bicycle paths, or had large amounts of motor vehicle traffic in their streets. At the area level, the most significant risk factors in 1998 were "living in Western Australia" and living in a town or city with more than 8,000 people.

SURVEYS OF SELF-REPORTED CRIME

Surveys can direct questions to the public not only as potential *victims* but also as potential *offenders*. There is a substantial literature on the self-report survey, which asks respondents to reveal criminal or anti-social behaviour. Typically, self-report surveys have been used to investigate the prevalence of delinquency in youth populations, particularly in the United States. Few self-report surveys have been conducted in Australia, though Warner (1982) provides a pioneering exception to this rule. More recently, the self-report methodology has been used by the Sibling Study in Queensland (Ogilvie

1996) and by Baker (1999) in New South Wales. Drug use surveys are conducted with some regularity and they provide us with better estimates of the extent of legal and illegal drug use than do police statistics.

The self-report survey has contributed to the development of crime theory, most notably Hirschi's control theory (Hirschi 1969). The results of self-report surveys of offending have challenged conventional wisdom about the distribution of offending by social class, gender and race. Self-report surveys show that the social class of respondents has far less impact on offending than indicated by police arrest records. These results have been countered by the accusation that self-report surveys are inadequate because:

- many of the behaviours investigated are trivial in nature, and
- the "frequency of offending" categories available for respondents do not provide scope for high-rate offenders to be adequately identified.

Surveys that allow for the detailed capture of offending frequency are more likely to uncover social class differences.

Ferguson et al (1993) demonstrated the utility of the self-report methodology in New Zealand. They showed that Maori youth offended at higher rates than Pakeha (non-Maori) youth, but an important finding was that differences in offending between these groups were much smaller than indicated by police apprehension statistics.

THE UNEVEN DISTRIBUTION OF CRIME

We turn now to an investigation of the spatial distribution of crime. We start with a "bird's eye" view, the examination of international crime rates. We then proceed to examine crime at progressively more refined geographic levels until we find ourselves on the city street and then with the individual victim. Our spatial progression is along what Taylor (1998) labelled the "cone of resolution". Regardless of the methods used to measure crime, a consistent finding is that its distribution is highly uneven. It is difficult to find any geographic level where crime is smoothly and evenly distributed.

International comparisons

Both police records and victimisation surveys provide information comparing Australia's crime rates with those of other countries. However, international comparisons face potentially great problems. Countries have different legislation and police recording practices, and also differences in public willingness to report crime to police. Given the potential of surveys to transcend local differences it is arguable that they provide a better means of comparing national crime rates than police statistics. However, surveys cannot provide information on homicides, so police or health statistics must be used for international comparisons of these offences. Our comparisons make use the International Crime Victims Survey (ICVS), a standardised survey run in industrialised countries in 1989, 1992, 1996 and 2000. The first ICVS showed Australia had high rates of crime and its results were received with scepticism, but subsequent surveys confirmed Australia's high crime rates (van Kesteren et al 2000). Of the 17 industrialised countries participating in the 2000 survey Australia had the highest prevalence of victimisation and was equal highest with England and Wales with respect to crime incidence rates.

Figure 2.5 *International comparisons of selected offences in 1999*

Source: The prevalence of contact crime, burglary and motor vehicle theft is taken from the ICVS (van Kesteren et al 2000) for selected countries. New Zealand data on burglary is from the 1992 survey. (Contact crime consists of robbery, sexual assault, or assault with force.) The incidence of homicide is taken from Barclay et al (2000) for the same selected countries.

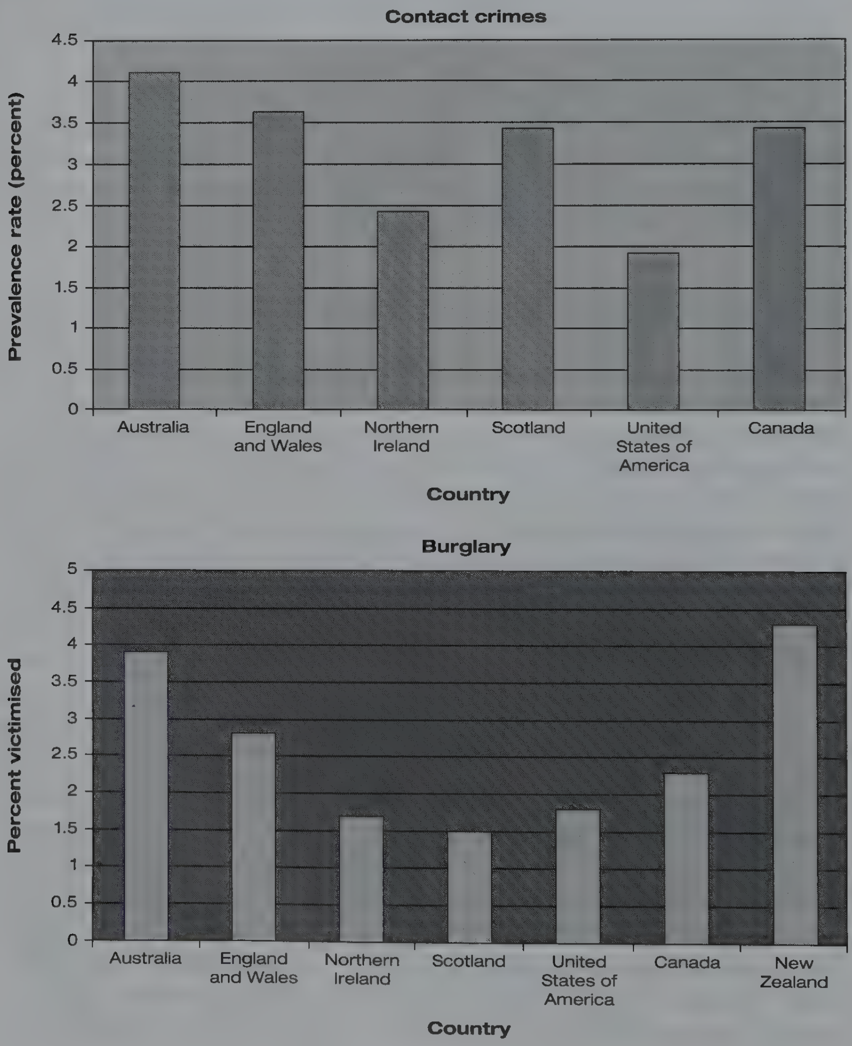
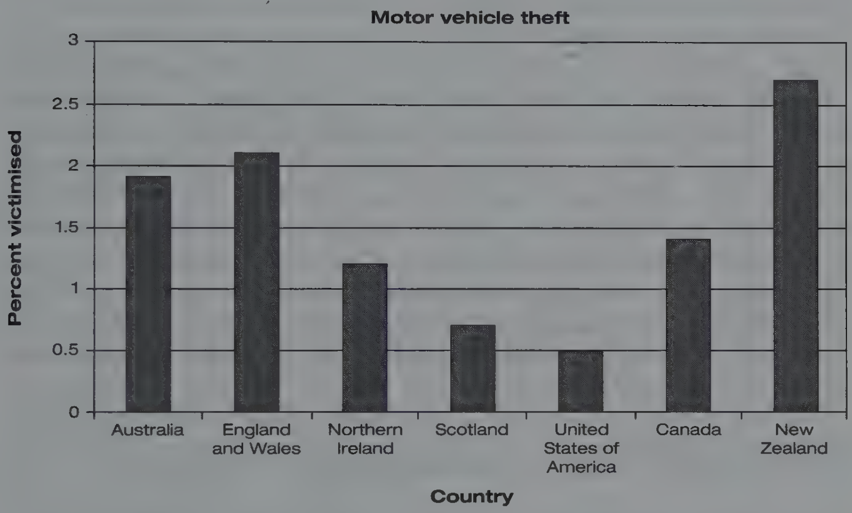
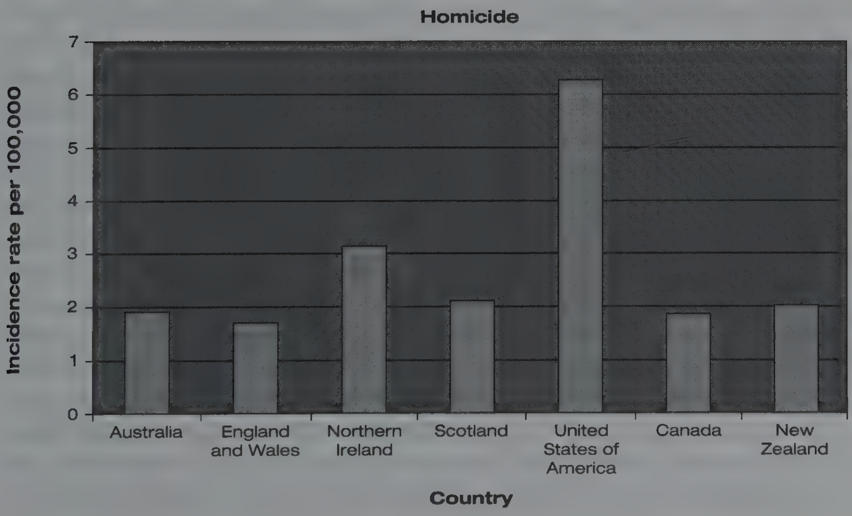


Figure 2.5 below indicates the prevalence rates for Australia and other selected countries for burglary, motor theft, and also "contact crime" (an aggregation of the survey results for robbery, sexual assault and assault with force). The ICVS results are supplemented for the same countries with rates of homicide taken from a Home Office statistical report by Barclay et al (2001). Australia has the highest rate for contact crime and was second for burglary and third for motor vehicle theft. On the other hand, Australia's homicide rate was well below that of the United States and also lower than that of Northern Ireland, Scotland and New Zealand. South Africa and Russia have extremely high homicide rates (56.5 and 20.5 per 100,000) but have no national ICVS data, so they were not included in Figure 2.5.





The ICVS has been subjected to robust criticism (Travis et al 1995), particularly about its methodology for assessing sexual assault. The main thrust of criticism concerned the ability of the ICVS questions to collect comparable information across countries where the legal definitions of rape and indecent assault differ. Changes in Australian legislation have broadened the definition of rape and also changed the common usage of the term. The ICVS sexual assault question seems to mix everyday language with legal terminology in a potentially confusing way. Nevertheless, for most offences the ICVS provides possibly the best international comparisons of crime.

Of substantive interest in Figure 2.5 is the relative position of the United States in the ICVS and in the homicide statistics. The United States has relatively low rates of contact crime, including assault, yet it has high, albeit decreasing, rates of homicide. This presents a dilemma for those who wish to interpret crime statistics as an indicator of the "moral health" of nations. Is the United States "morally sick" because of its high homicide rates or "morally healthy" because of its lower rates of other violence? These contradictory patterns point to the importance of opportunity factors in crime, including firearm accessibility. Ease of access to lethal weapons may explain why a nation with apparently moderate rates of general violence can sustain very high rates of lethal violence (Zimring and Hawkins 1999).

City size, a measure of urbanisation, is one factor associated with crime rates across the industrialised countries involved in the ICVS. Walker (1994) showed that almost two thirds of Australia's population live in large cities and we experience a lower rate of crime than predicted by our level of urbanisation.

Comparisons of States, cities and regions

Australia's federal system of government ensures that interstate comparisons take pride of place in the geographical analysis of crime. Most national crime publications have comprehensive interstate breakdowns but rarely do they provide comparisons between or within cities, between urban and rural areas, or between regions smaller than States.

Surprisingly, the most useful information on the regional distribution of crime has come from crime surveys rather than police statistics, even though surveys provide increasingly unreliable estimates as geographic areas and sample sizes become smaller. The first national crime survey in 1975 provided information on crime rates for cities and towns grouped by population size, and also allowed capital city crime rates to be compared with each other for the first time (Australian Bureau of Statistics 1979). The results of this survey were unexpected because Australia's largest cities, Sydney and Melbourne, did not have the highest crime rates. Braithwaite and Biles (1980) concluded that Perth was Australia's "most dangerous" city. Sydney and Adelaide followed next and were less safe than Melbourne and Brisbane. Australia's smallest capital city, Hobart, had least crime, but the correlations between crime rates and city size were not as strong as those found in American studies (Ousey 2000).

One way of examining the influence of large urban areas on crime is to examine the distribution of crime between the capital cities and the remainder of the largest States. All of these cities (Sydney, Melbourne, Brisbane, Perth and Adelaide) have populations of over one million and would have been classed as "large" cities by Ousey.

Figure 2.6 above is derived from the supplementary tables for the 1998 Crime and Safety Survey (Australian Bureau of Statistics 1999b). In 1998, as in 1975, Sydney's crime rates did not stand out and Melbourne again recorded lower crime rates than other cities, yet the popular myth that Australia's biggest cities are "crime capitals" lives on despite the contradictory evidence from national crime surveys spanning 23 years.

A pattern that does emerge from Figure 2.6 is that, generally, the crime rates of the capital cities are higher than the rates for the rest of the State, but the picture varies by offence and State. For example, assault rates in Perth, Sydney and Brisbane are *lower* than the rates for non-metropolitan areas in their States, the reverse of the situation for motor vehicle theft and robbery.

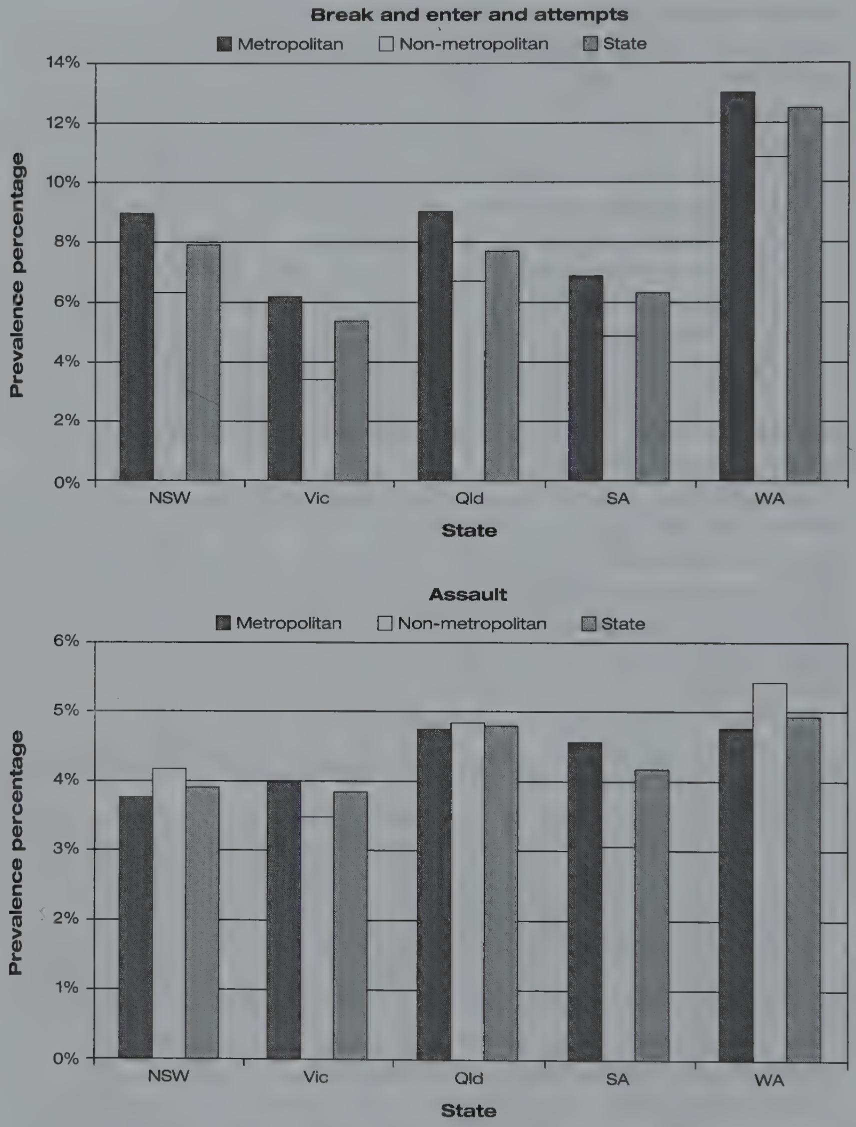
The effect of urbanisation on Australian crime rates is in need of further research. Urban population clearly has some impact on crime rates, particularly for motor vehicle theft and robbery, but burglary and assault rates seem less affected. One surprising aspect of a national survey analysis of break and enter risk-factors (Australian Bureau of Statistics 1998) was that a town or city needed a population of only 8,000 people for its households to have an elevated risk of break and enter. This result is consistent with Western Australian research, which shows that even small towns in regional areas may support relatively high rates of crime (Crime Research Centre 1999).

Other sources of police statistics confirm that there are large crime-rate differences in non-metropolitan areas. For example, the New South Wales Bureau of Crime Statistics website and its statistical reports indicate that some remote Local Government Areas (LGAs) have higher crime rates than LGAs in Sydney, while other regions have very low rates of crime. The expression "Back of Bourke" symbolises remoteness in Australia, yet in 2001 the Bourke LGA had the highest rates of recorded motor vehicle theft, sexual assault, and assault in New South Wales (New South Wales Bureau of Crime Statistics and Research 2002).

An expectation of urban-rural differences was generated by sociologists such as Wirth (1933) with his focus on the bonds of kinship, neighbourliness and sentiment arising from a "common folk tradition" believed to be characteristic of rural areas. This tradition was contrasted with an urban way of life based on competition, aggrandisement and mutual exploitation. However, other theories provide a less direct role for urbanism. There are repeated findings that high crime communities are low in economic status, as measured by income, poverty, unemployment,

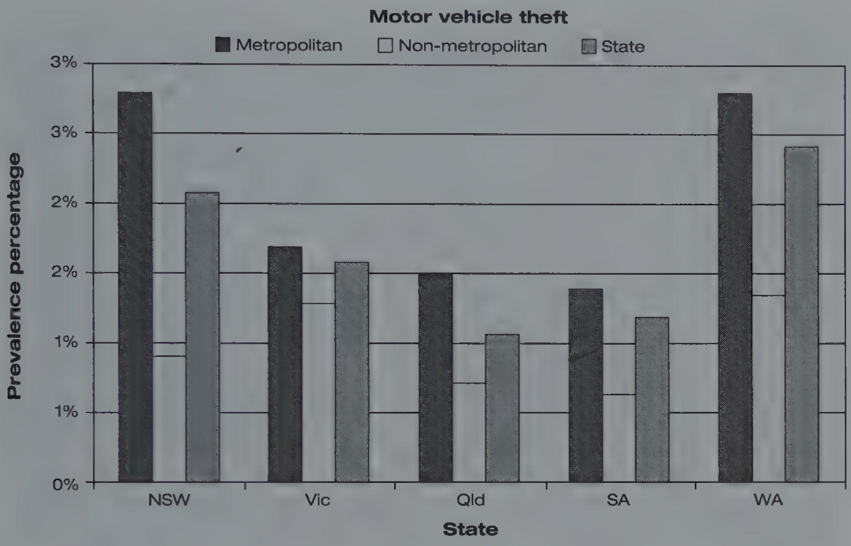
Figure 2.6 *Metropolitan and non-metropolitan crime rates in five States, 1998*

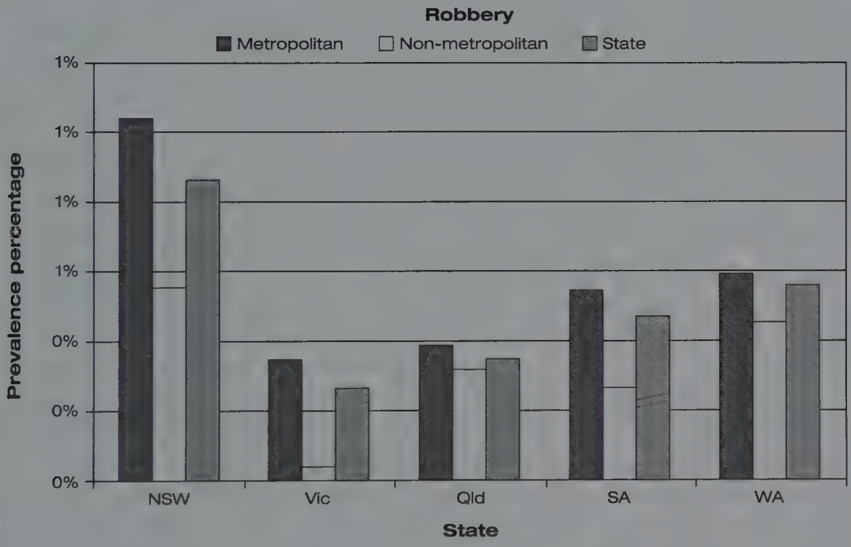
Source: Derived from *Crime and Safety Australia, 1998: Supplementary national and standard tables*, pp 110-113



welfare, occupation, education, inequality, and housing (Agnew 1999).[2] These factors are not necessarily concentrated in the large Australian cities, indeed remote Aboriginal communities have extremely high levels of socio-economic disadvantage (Crime Research Centre 1999).

Urban-rural crime patterns become entangled with issues surrounding Aboriginal crime rates. For example, Broadhurst (1997) examines the notion of a "frontier" culture that includes elements of both geography and metaphor. If intensity of policing is connected with a geographic





frontier – those remote regions whose urban centres have Aboriginal hinterlands – then high rates of urban crime may reflect intensity of policing as well as high rates of offending behaviour. Away from the towns, the nearest police officer may be hours away by car. In these places, victims will surely consider alternative responses to minor crime instead of calling the police.

Urban crime at the street level

Empirical studies suggest that area variations in crime rates can occur on a very small scale. In the United Kingdom, Bottoms et al (1987) showed that two adjacent areas in Sheffield, with similar socio-demographic indicators, differed in their officially recorded rates of crime by a factor of three. Similarly, Morgan (2001) found that two adjacent areas of a small Perth suburb maintained large and stable differences in household burglary rates over a five-year period.

Recent research has examined "hot spots", which account for disproportionate amounts of crime and calls for police service (Sherman 1995). For example, Jochelson (1997) examined the distribution of assaults and robberies at street level in central Sydney and identified five major "hot spot" zones in which crime was clustered. Not only were assaults and robberies clustered in zones, they were also associated with main streets, particularly those with concentrations of entertainment venues, licensed premises, or transport facilities. Jochelson found that offences clustered in time as well as space. There were more assault and robbery incidents in the summer months and in the early hours of Saturday and Sunday morning, and one of the crime prevention recommendations in the report was for an increase in police patrols at "hot spots". Figure 2.7 below shows the distribution of assaults in Oxford Street, Darlinghurst between July 1995 and June 1996. Assaults

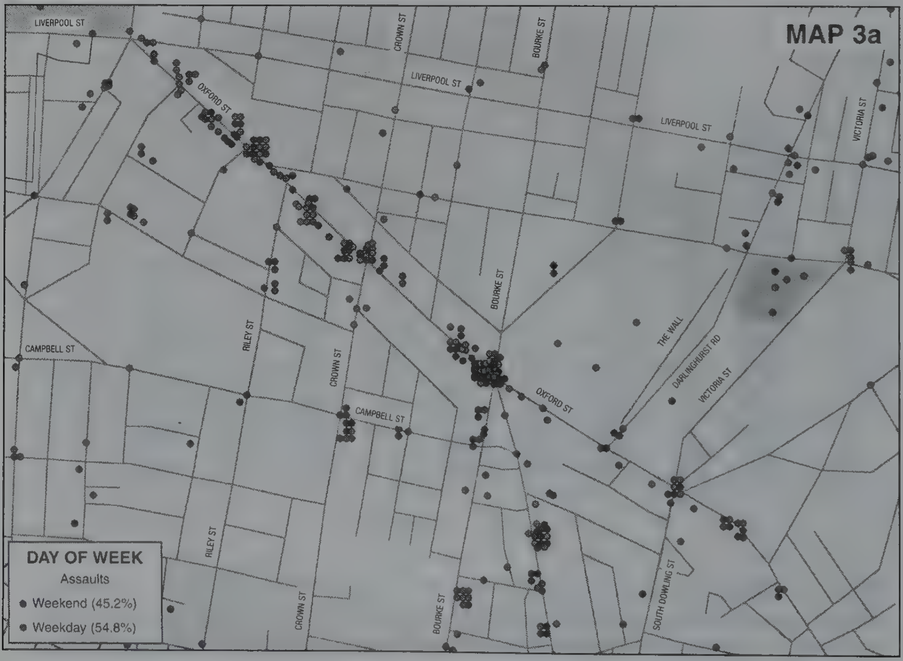

LIVERPOOL ST
CROWN ST
BOURKE ST
MAP 3a
LIVERPOOL ST
OXFORD ST
LIVERPOOL ST
VICTORIA ST
BOURKE ST
RILEY ST
CROWN ST
CAMPBELL ST
THE WALL
DARLINGHURST RD
VICTORIA ST
OXFORD ST
CAMPBELL ST
RILEY ST
CROWN ST
BOURKE ST
SOUTH DOWLING ST
DAY OF WEEK
Assaults
● Weekend (45.2%)
● Weekday (54.8%)

Figure 2.7 *Assaults in Inner Sydney at street level*
Hot spot zone 2 – Oxford Street Darlinghurst
Source: Jochelson 1997

averaged one per day, but 45% of the assaults occurred on weekends. The main clusters of assaults in this popular area of Sydney are close to nightclubs, other licensed premises, a fast food store and a major pedestrian intersection.

CENTRAL STATION RECORDS
synergy
PEARSONS

Figure 2.8: Sydney police raid on an Oxford Street nightclub in June 2001
Source: Newspix

Patterns of crime discovered by Jochelson are fruitfully explored using the predictions of *routine activity theory* (Cohen & Felson 1979). The elements of predatory crime are, according to this theory, the conjunction in space and time of a motivated offender, a suitable target, and the absence of a capable guardian. The theory places greater emphasis on current crime opportunities, and the situations in which they arise, than on the factors that produce offenders.

The individual victim

At the limit of the cone of spatial resolution is the individual victim. Just as crime is concentrated within small areas, it is also concentrated on certain individuals. The concentration of crime amongst a limited number of victims has attracted great interest for theory and for crime prevention. For example, the 1998 national Crime and Safety Survey (Australian Bureau of Statistics 1999a) indicated that 6% of assault victims experienced seven or more incidents of assault and accounted for 32% of all incidents. The finding that crime is concentrated among a limited number of victims has been used to mount successful crime prevention initiatives, particularly in the United Kingdom. For example, burglary prevention initiatives in Huddersfield and on the Kirkholt estate, Rochdale focused on the prevention of repeat burglaries and were also successful in reducing total burglary rates (Pease 1998).

CONCLUSION

This chapter has introduced ways of measuring crime, and investigated some common patterns of crime and their interpretation. The task is more of an art than a science, and some interpretative tasks are relatively simple while others are difficult. Being able to recognise the difference between these situations is one aspect of the criminologist's skill.

The task of crime measurement is often illustrated with diagrams and images. The most common of these focus on loss. According to these images, we see only "the tip of the iceberg" of all crime; or we are haunted by the "dark figure"; or the criminal justice system is a "leaky sieve" that loses cases, never for a good reason, along the inexorable path from crime report to offender imprisonment. But perhaps the most useful image is one developed recently by Maguire (1997) – the image of a painter at an easel. This image is not preoccupied with loss, but with the task of an artist, adding new elements to the picture and painting over old ones, in a changing social landscape.

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QUESTION

Examine the city crime maps in Figures 2.7, 2.9, 2.10, 2.11 and 2.12 and suggest reasons for the crime patterns found.

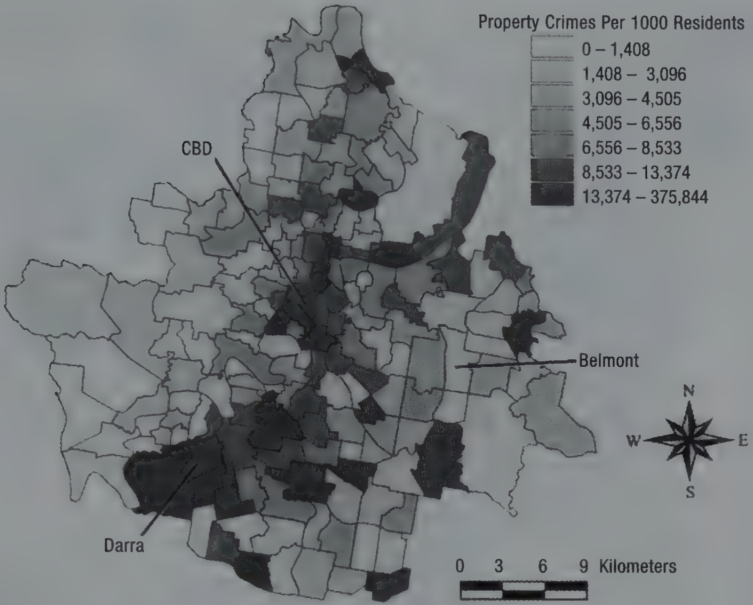

Property Crimes Per 1000 Residents
0 – 1,408
1,408 – 3,096
3,096 – 4,505
4,505 – 6,556
6,556 – 8,533
8,533 – 13,374
13,374 – 375,844
CBD
Belmont
Darra
N
W
E
S
0 3 6 9 Kilometers

Figure 2.9 *Police statistics of property crime incidence rates in Brisbane suburbs, 1996*

Source: Murray et al (1999, p 317)

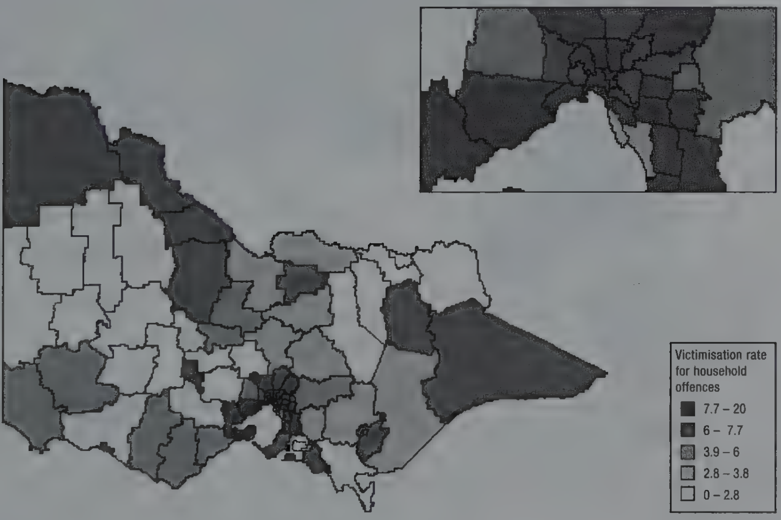
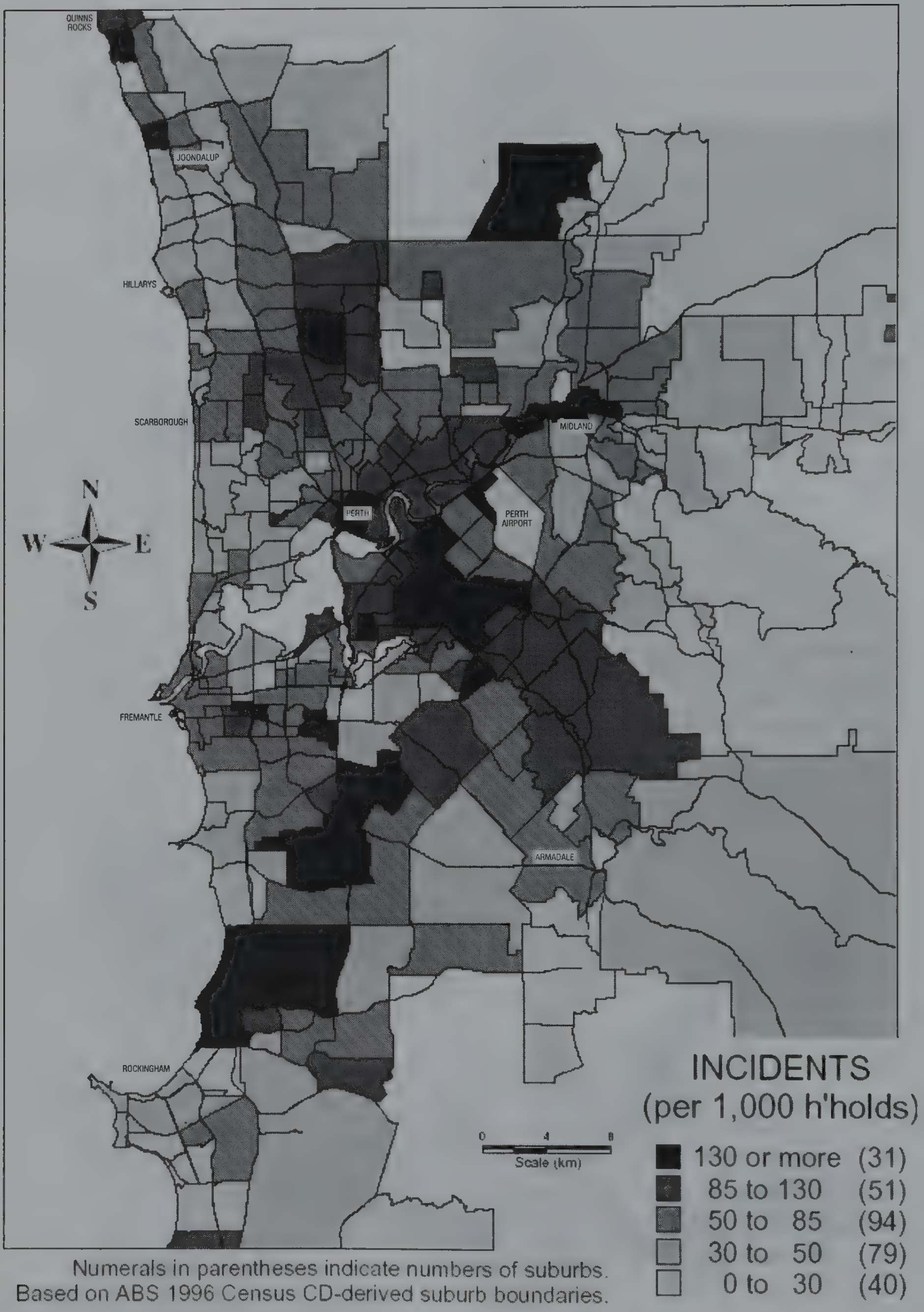

Victimisation rate for household offences
7.7 – 20
6 – 7.7
3.9 – 6
2.8 – 3.8
0 – 2.8

Figure 2.10 *Survey statistics of personal crime prevalence rates in Melbourne and Victoria, 1999 (rates per 100 respondents)*

Source: Victorian Department of Justice (©1999, p 11)


QUINNS ROCKS
JOONDALUP
HILLARYS
SCARBOROUGH
MIDLAND
PERTH
PERTH AIRPORT
N
W
E
S
FREMANTLE
ARMADALE
ROCKINGHAM
0
4
8
Scale (km)
INCIDENTS
(per 1,000 h'holds)
130 or more (31)
85 to 130 (51)
50 to 85 (94)
30 to 50 (79)
0 to 30 (40)

Numerals in parentheses indicate numbers of suburbs.
Based on ABS 1996 Census CD-derived suburb boundaries.

Figure 2.11

Police statistics of burglary rates per 100,000 dwellings—Perth, 2000

Source: Ferrante et al (2001)

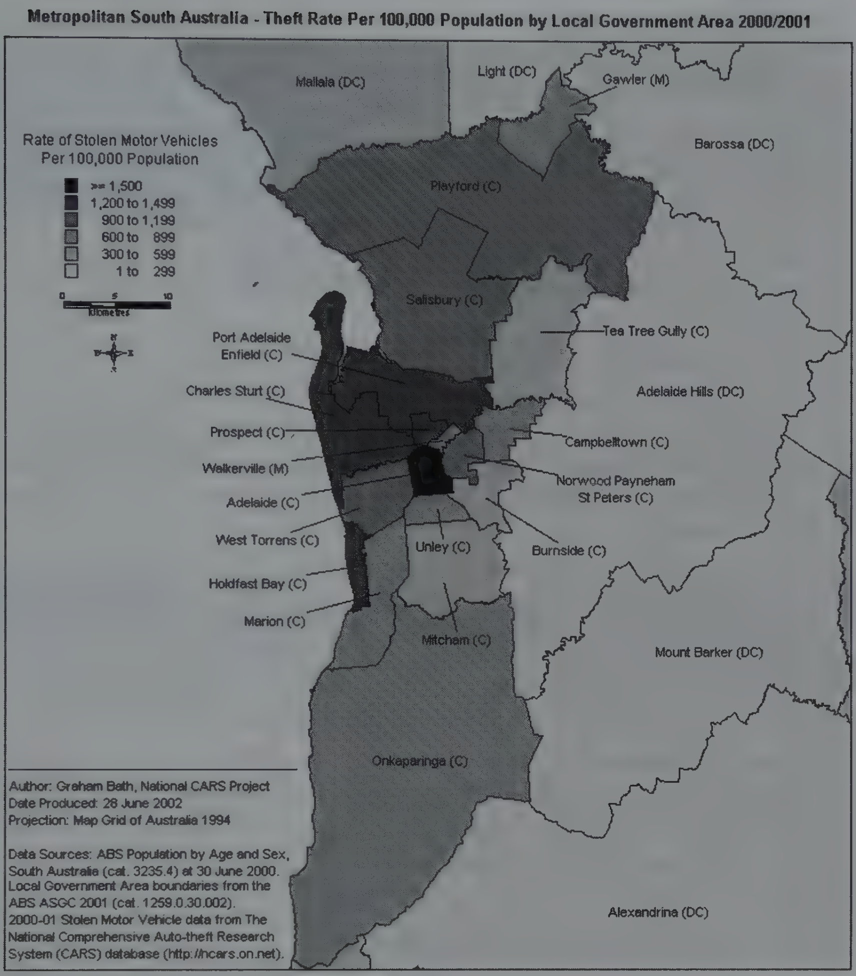

Metropolitan South Australia - Theft Rate Per 100,000 Population by Local Government Area 2000/2001
Rate of Stolen Motor Vehicles
Per 100,000 Population
>= 1,500
1,200 to 1,499
900 to 1,199
600 to 899
300 to 599
1 to 299
0
5
10
Kilometres
Mallala (DC)
Light (DC)
Gawler (M)
Barossa (DC)
Playford (C)
Salisbury (C)
Tea Tree Gully (C)
Port Adelaide
Enfield (C)
Adelaide Hills (DC)
Charles Sturt (C)
Prospect (C)
Campbelltown (C)
Walkerville (M)
Norwood Payneham
St Peters (C)
Adelaide (C)
West Torrens (C)
Unley (C)
Burnside (C)
Holdfast Bay (C)
Marion (C)
Mitcham (C)
Mount Barker (DC)
Onkaparinga (C)
Alexandrina (DC)
Author: Graham Bath, National CARS Project
Date Produced: 28 June 2002
Projection: Map Grid of Australia 1994
Data Sources: ABS Population by Age and Sex, South Australia (cat. 3235.4) at 30 June 2000. Local Government Area boundaries from the ABS ASGC 2001 (cat. 1259.0.30.002). 2000-01 Stolen Motor Vehicle data from The National Comprehensive Auto-theft Research System (CARS) database (http://ncars.on.net).

Figure 2.12 *Police statistics of car theft rates per 100,000 population by postcodes, Metropolitan Adelaide 2000-2001*

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USEFUL WEBSITES

National

www.abs.gov.au/

This is Australia's official government statistics site, the Australian Bureau of Statistics (ABS). ABS publishes information on recorded crime, crime surveys, criminal courts and correctional services. Australian university students have free access to most publications through university libraries.

www.aic.gov.au/stats/index.html

Australian Institute of Criminology statistical resources.

www.carsafe.com.au/carsafe.html

CAR-SAFE, the site of the National Motor Vehicle Theft Reduction Council, has excellent State and local statistics and maps on motor vehicle thefts. Students can obtain an access password from the site administrator.

State

State and regional crime statistics are available from government and university sites for the various States. These include:

www.lawlink.nsw.gov.au/bocsar1.nsf/pages/index

Bureau of Crime Statistics and Research, New South Wales.

www.law.ecel.uwa.edu.au/crc/

Crime Research Centre, University of Western Australia.

www.oesr.qld.gov.au/views/statistics/topics/crime/crime_fs.htm

Office of Economic and Statistical Research, Queensland.

www.ocs.sa.gov.au/

Office of Crime Statistics, South Australia.

Notes

[1] Insurance companies require victims to report the offence to police and then check with police to confirm that this has been done. However, for stolen vehicles that are recovered quickly and intact there may be differences between jurisdictions in recording practices. Note that Western Australian data from 1993–1996 included the theft of caravans and trailers, in contrast to the other States. The number of these thefts is unknown.

[2] In the American context, community size, population density, overcrowding, residential mobility and percentage non-white population are other correlates of crime.

CHAPTER 3

CRIME AND THE MEDIA

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KEY WORDS

- news
- infotainment
- discourse
- hegemony
- ideology
- moral panics
- popular culture
- tabloid journalism

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INTRODUCTION

In 2001 and 2002, print, broadcast and cable media provided extensive coverage of the sexual assault of seven teenage girls by a group of boys in Bankstown, a western suburb of Sydney. Coverage linked the rape to wider issues of race and crime by examining: fears of sexual and non-sexual assault and intra- and inter-ethnic violence; perceived decline in law and order portrayed as resulting from inadequate policing, ineffective prosecution agencies and leniency of sentencing; a decline in family discipline; as well as broader trends in immigration, and youth unemployment. One journalist on commercial television news in Sydney

(Brian Henderson, National Nine News, 23 August 2001) claimed that the percieved leniency of sentences given to three boys "of Lebanese heritage" for the pack rape of two girls had led to "Widespread outrage" throughout the city. According to the journalist, one of the youths who had migrated to Australia eight years previously had said that "he had no idea that rape was a crime".

In Sydney and Melbourne, talkback radio hosts, such as Alan Jones and Steve Price (3AW), Howard Sattler (2SM) and John Stanley (2UE), claimed to represent the community in attacking the laxity and inefficiencies of the criminal justice system as well as contemporary immigration policy. Such an assertion of consensual outrage was deliberately contentious. Ethnic organisations immediately called upon the media and the New South Wales Premier, Bob Carr, to stop defining the problem in terms of "ethnic gangs".

These discussions also fuelled public concern about perceived increases in the levels of crime in particular areas and about groups who were most likely to be perpetrators and victims. Misconceptions persisted despite interventions by criminologists working for the State government's Bureau of Crime Statistics and Research who indicated there was "no support whatsoever either for the claim that sexual violence in that area is more prevalent than anywhere else in the state" or that "the incidence of sexual assault is rising in Bankstown" (Weatherburn 2001).

News and current affairs programming does not simply mirror crime and its control. Journalists actively construct their stories by choosing particular kinds of events and presenting them to their assumed audience in terms they think will make such events intelligible. To allow the audience to make sense of a crime story, events must be both identified as crimes, and placed within a specific social context.

Consequently, news and current affairs programs are partial – they are both selective and distorted, not simply a natural reflection of the world around us – and they are the product of the cultural and social organisation of the media.

The Bankstown story was one of hundreds that could have been reported in the media that day as being about crime. Why was it selected and why was the story related in that particular way? Drawing on a series of Australian case studies, we examine how crime is portrayed in both print and electronic media. As we consider a variety of media formats – from regular informational crime news reporting through the more tabloid news and current affairs programs to fictionalised narratives of real crime – we look at how such reporting and

Directing Traffic
Police

Figure 3.1 *ABC Television's Four Corners program "Directing Traffic" explored police corruption in Sydney*

Source: Courtesy of Four Corners, ABC TV descriptions influence the ways we lead our lives or think about particular groups of people and places.

Exercise 3.1

Choose a contemporary story of crime and trace how it has been covered by several different kinds of media. For example, you could select a newspaper story and watch or listen to the television or radio coverage in news, talkback or current affairs programming.

1. Why do you think that this event was reported in the media?
2. Were there any differences in the way that the story was handled by different kinds of media or in different kinds of programming?

NEWS REPORTING

As the production, organisation and distribution of information has become a key part of organisational power, the ways information and knowledges have been constituted and disseminated have in part been directed and constrained by the economic and *ideological* needs of media organisations, their owners and their clients. For example, since the early 1980s, ownership of the Australian media has been concentrated in the hands of a very small number of corporations (Chadwick 1989; Schultz 1989; Cryle 1995; Ward 1995). Mergers between various media industries and services have affected not only ownership but also systems of supply, delivery and use (Turner & Cunningham 1997) and intensity of competition. These changes have had an impact on the way stories of crime are told.

When criminologists and other social scientists examine the way crime is represented in the media they do so from a range of competing perspectives (see below, Chapter 5). Yet it is clear that news-makers prefer some types of explanations of stories about crime to others and follow a system of procedures that allow them to make their choices seem obvious and routine. Various criminological studies, including some based on Australian fieldwork, have found the ways journalists portray crime reflect three kinds of constraints on their work – technical, practical and ideological (Lippmann 1978; Chan 1987; Grabosky & Wilson 1989; Ward 1995; Israel 1998).

Technical constraints

Journalists have to create stories that fit the technical needs of their newspaper, radio, television station, or website. For example, they may have to write a story of a particular length or duration, that can be understood by a particular audience, or that balances other stories being created for the same broadcast. Without visual images, a story will probably not be aired on television (Tiffin 1989). If images of the event cannot be found, journalists will seek help from a file image library. With a few exceptions, most crime stories created by Australian journalists are local. Reporters try to bring out the parochial angle, in an attempt to hold the interest of the people in their circulation or broadcast area. The Bankstown story had all these elements – specific visual images, local content and plenty of possibility for additional file images of ethnic youth in groups, court scenes and local streets to supplement the basic storyline. It also raised themes of sex, violence and race.

All this indicates that journalists are socialised into a particular working view of what constitutes a good news story. This in turn means that although the day-to-day events that constitute news change, the underlying principles of selection and presentation of news remain constant. Steve Chibnall (1977) examined the production of stories about law and order in the United Kingdom. He concluded that journalists appear to work to a series of professional rules that frame their news values:

- **immediacy:** the story has to be about something that has just happened;
- **dramatisation**: the story has to grab the attention of the reader;
- **personalisation**: the story should be rooted in individual struggle, for instance by using an interview with a relative, victim or witness;
- **simplification**: the issue has to be easily understood, placed into familiar paradigms with which the audience can easily identify such as law and order or easily identifiable heroes and villains;
- **negativity and titillation:** bad news is good news. The worse the event seems to be in terms of damage, violence, drama, the more likely it is to make it into the newspaper or broadcast;
- **conventionalism**: events are interpreted as connected even if there is no real link;
- **structured access**: news stories are grounded in authoritative comments of experts; and
- **novelty**: while each story has to appear understandable and familiar, each story needs a fresh angle.

Most of these features identified by Chibnall can be found in the Bankstown story and in many other incidents of contemporary Australian reporting. For example, Wilczynski and Sinclair (1999) reviewed over 1,300 articles about child abuse in the Sydney quality (*Sydney Morning Herald* and *Sun-Herald*) and tabloid (*Daily Telegraph Mirror* and *Sunday Telegraph*) newspapers. We reproduce one of a series of articles by Adele Horin in the *Sydney Morning Herald* on child abuse. The reseachers concluded that even in the quality papers most of the discussion was trivial and distorted, and aimed at provoking outrage and horror rather than at understanding the causes of abuse and promoting prevention.

Stories were often dependent on official sources. The majority focused on individual cases, featuring the most extreme – in the sense of being unusual, dramatic, unexpected or bizarre – and less common forms of abuse. In contrast, the press under-reported child-neglect, emotional abuse, and abuse within the home.

In reported *horror stories* – defined as reports of specific cases of abuse involving unusual, dramatic or bizarre injuries and invoking strong emotions of horror, anger, revulsion or tragedy – Wilczynski and Sinclair found that abusers were depicted as defective or as dangerous and the incident was divorced from the social context within which the abuse took place. In *human-interest* stories, victims were often portrayed as troubled even if they managed to overcome their problems.

Toddler who paid with her life

By Adele Horin

Page 2, *Sydney Morning Herald* Monday, 25 September 1995[1]

This little girl had done nothing more than soil her nappy – yet she was to pay for this with her life.

Two months after this photograph was taken she was dead: one of 19 children whose lives have been lost in the past 2 years after they slipped through the safety net of NSW's child protection system.

Darkness was falling around the suburban house in which her family – a man, her mother and three children – lived. There were two girls, aged three and 18 months, and a baby boy, who was the man's only biological child.

Like most 18-month-old toddlers, the girl was not yet toilet-trained. In court, months later, the judge was to describe how this had frustrated and angered the man – how on this day, when she soiled her nappy, the man saw red.

It was a bad day. He was in withdrawal from amphetamines. Even on a good day, he could explode in violence. He was 25, immature and not coping with the demands of parenting. His partner was 20.

The man grabbed the little girl and took her to the bathroom. Then the mother heard the screams and rushed there. The man had plunged the toddler into a bath of scalding water up to her chest. He was holding the child who was screaming and in intense pain. The skin was peeling off her body and large amounts of fluid were oozing from her. The mother wanted to get help immediately. The man would not allow it. He said he knew what to do, and he was terrified the police would come and imprison him because of outstanding warrants.

Continues...

He placed the little girl in a cold shower and peeled off much of the scalded skin. They applied some ointment and wrapped her in nappies. The little girl lost consciousness. They waited 3 hours, until the man finally agreed to get help. They called his foster mother, who immediately drove the baby to hospital. It took her 2 months to die. The man was sentenced to 17 years' jail for murder. The mother was placed on a good behaviour bond for manslaughter because of the part she played in the delay.

The toddler's death was one of 19 investigated by the Department of Community Services' (DOCS) internal child deaths review committee, whose official findings are not publicly available. However, the Herald has learnt that a visitor notified the family to the department a short time before the toddler's death. The older girl had suspicious bruises, but the couple said the three-year-old had fallen over in the bath.

A DOCS district officer from the extremely busy and understaffed local office visited the family. But the family was not given the support it needed.

In the subsequent court case, it emerged that the man, who had been in foster care since infancy, had been much loved by his foster parents. However, he became obsessed about his origins, left home early, and acquired criminal convictions for drug-related problems.

The mother had been raised by a number of relatives after her mother had died when she was a toddler. She was rebellious and longed for a proper family life, and had two children by the time she was 18. The judge found she was dominated physically and psychologically by her de facto. The family was clearly high-risk.

Information from the child deaths review committee shows the 19 children who died came from families with many disadvantages. They are easy enough to identify. But the department says it is much harder to know which of the high-risk families will seriously injure or kill their children.

High-risk signs include the mother being aged 20 or younger at the birth, the parents having been abused as children, a partner who is not the biological parent, poverty, social isolation, high mobility, psychiatric illness and domestic violence.

In at least six of the 19 cases, the mother had significant drug or alcohol problems. Three of the children were twins. Five children had been notified to the department for neglect only, on the surface less serious than physical abuse.

The children who died were highly likely to have been abused or neglected previously. Other risk factors included the child having been a premature or low-weight baby. Children with birth defects, chronic illness or developmental lags were also at higher risk.

A study of 17 children who died of abuse in the Children's

Hospital, Camperdown, between 1976 and 1990, showed 76 per cent died from head and brain injuries, the rest from strangulation or asphyxiation. The outstanding finding was evidence of previous physical abuse. "A documented or suspicious episode of child abuse in an infant should be taken very seriously," said the study's author, Professor Kim Oates, of the department of pediatrics and health at Sydney University.

The child deaths review committee also found that deaths occurred more frequently on public holidays or weekends or during family festivals such as Christmas. Frequently, the family had sought help about managing the child, usually from a doctor, a short time before the child's death.

Exercise 3.2

For each of the professional rules identified by Chibnall, consider what impact it might have had on the construction of Horin's article.

Do you think that Wilczynski and Sinclair's view of the reporting of child abuse in quality newspapers is a fair reflection of the reporting in Horin's piece?

Practical constraints

Reporters also need to work on stories that meet practical needs. They need to find crime stories that are relatively easy to produce, that do not alienate possible contacts for future stories, and suit the news needs and organisational goals of the type of media running the story (Ward 1991; Electoral and Administrative Review Commission 1993).

Due to space and time constraints, the basis for a reported crime story is usually obtained in quite straightforward ways. Many stories use standard leads from state organisations such as the courts or the police (Ericson, Baranek & Chan 1987; Schlesinger & Tumber 1994; Putnis 1996; Sercombe 1999). As Peter Grabosky and Paul Wilson discovered during their study of Australian reporters, crime-beat journalists rarely bother to carry out independent investigation or research. Reporters and organisational sources depend on each other's goodwill. Reporters have to develop and maintain sources. They have to be trusted: break the source's trust and the source will never use you again; criticise sources and the whole media outlet may be marginalised.

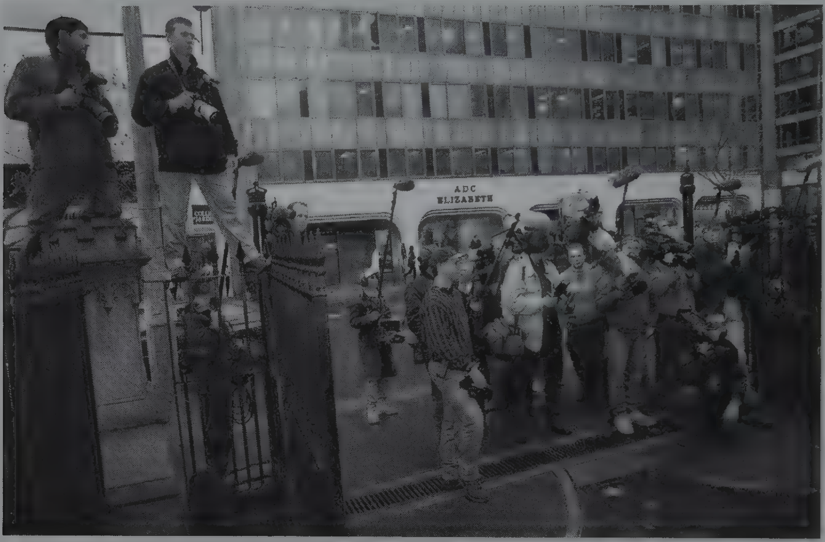

Figure 3.2 *Press wait for the arrival of Ivan Milat as he returns to court in Sydney in 1996 where he was found guilty of the murder of seven backpackers*

Source: Newspix (photo by Michael Amendolia)

Often, reporters lack expert knowledge of the law. Again, because of time and resource constraints, they will rarely sit through a criminal case continuously. Instead, they will rely on officials such as prosecutors to fill in the gaps. Increasingly, media outlets are refusing to send reporters to cover the case, and will instead just assign a general assignment reporter at crucial points, such as the end of a jury trial. Unwilling or unable to grasp the complexity of evidentiary matters and legal arguments – and assuming that their audience will feel the same way – many reporters focus on the personalities of the lawyers or the accused, or on any dramatic or human interest elements of the case. Stories on criminal trials are consequently often superficial, decontextualised and sensationalised (Chan 1987).

New technologies, more aggressive marketing strategies, increasing competition between different kinds of media and greater media literacy among general audiences have meant that the format of the news stories has to be even shorter, more visually interesting and dramatic. At the same time, the social and cultural changes in society have brought about broad changes both in the types of crime committed in the wider Australian community and in the ways these are dealt with by the justice system, and the media have had to adapt to this too.

So what defines crime news is not static but is influenced by cultural and social priorities and by technological changes. What was considered exciting and interesting news 20 years ago is not the same as today, altering the content and the way the crime news is packaged and presented. Within this highly pressured environment, crime stories that can be told clearly and within familiar narrative paradigms will get far more exposure than others. Events that can offer a high degree of action, interesting visuals, clear identification and distinction of perpetrator and victims will make it into the news broadcast; stories that seem to be morally ambiguous and do not have visuals, will not. Inevitably that means that stories of violence, sex and action are newsworthy. Those of corporate crime are less so (Grabosky & Wilson 1989). This in turn means that certain groups of people and certain places (such as Lebanese youth in Bankstown) are more regularly depicted as criminal than others.

Ideological constraints

A third set of constraints on the actions of journalists is ideological. Although owners of print and broadcast media may only rarely exert direct influence on the way news is reported (Grabosky & Wilson 1989; Curran 1990), proprietors, boardrooms and market networks do create the structures and provide the broad parameters within which news is constructed (Cunningham 2001). In order to understand the capacity and constraints of individuals' attitudes to influence news production, we need to examine the general organisational processes within which individual journalists work.

These influences may be quite subtle. Richard Ericson and his colleagues (1987) referred to a mantle of impartiality and objectivity that journalists used to legitimate their position (see also Tiffin 1989; 1997). Only by giving most attention to dominant or *hegemonic* views could many journalists assure both themselves and the world that they were objective, impartial, universal, balanced and fair. In their study of the Toronto media, Ericson et al (1987) found that the same groups of sources regularly provided news releases and news features. Often these were the same people who were interviewed or cited by journalists and whose *Letters to the Editor* were published. In choosing such people, journalists indicated who were the valuable sources in our society. In short, reporters responded to the constraints placed upon them by using sources who were *in the know,* whose accounts were most likely to have social standing, whose availability and quality of performance was predictable, and who could be called upon repeatedly.

As a result of these working practices, news and current affairs reporting of crime gives preference to the outlook of particular sources and uses a methodology of event discovery and construction that tends to ignore alternative ways of understanding events. News organisations reveal certain facets of criminal activity and hide others. They can do so because there is an unequal ability to acquire and use knowledge, and prevent its acquisition and use by others.

In the Bankstown story, the boys who perpetrated the abusive act of rape, become described in terms of their ethnicity, their collectivity and their age – as Asian or Middle Eastern youth gangs. Social issues of unemployment or boredom were dropped from any explanation in favour of more simplistic, more dramatic accounts of racial provocation.

Particular patterns of news reporting may be linked to broader public perceptions of crime, and in particular to public fear of crime. As a result, criminologists have become interested in the way that apparent increases in particular crimes become the focus of collective *moral panics* (Cohen 1972; Ben Yehuda & Goode 1994) or perceived crises of law and order (Taylor 1980; Saunders 1982; Brown 1988; Cunneen 1989).

One effect of media reporting of crime can be amplified fear of risk. In 1993, a university research project revealed information about levels of fear – not levels of crime – among the residents of a middle class inner-city suburb of Adelaide and the effect that fear had on behaviour. In its coverage of the report, the *Adelaide Advertiser* focused on the high levels of fear that apparently existed in Unley. Its main article was headlined "Grim nights in a suburb of Fear". The first line illustrated the sensationalist nature of the coverage: "Unley has become a suburb of fear where the dread of violent crime drives people indoors after dark." The main thrust of the *Advertiser's* article was that crime was ravaging Unley. The *Advertiser* personified its account of the university report by relating the sad story of Tina who, pictured with "baby Paolo", was apparently kept "prisoner" in her own home.

Israel (1998) investigated how the story developed after the initial media coverage. Reports became the product of an ongoing process of contest and negotiation often involving various parts of different media and source organisations such as the local council, State government, police and researchers. Each had its own agenda, its own preferred spin for the story. For example, local and State governments criticised the media for scare-mongering. The local police emphasised that Unley had a low crime rate. All received some media coverage.

The Unley story is perhaps most interesting because of its ordinariness. It became a subject for local debate for two or three weeks at most. However, the episode formed a small part of a regular pattern of crime reporting in South Australia. Mostly, these stories die away. Often, the same themes resurface in another form. Occasionally, stories escalate.

Australian fears are not necessarily home grown. Contemporary American culture has a tendency to stimulate and export panics about lesser matters (Best 1999). In Australia, we watch American television shows, read American books, see American politicians, and seem all too frequently to develop an American desire to panic about crime, and about particular kinds of crime (Braithwaite & Barker 1978). In following the American lead, Schwartz and Israel (2000) argued that not only are Australians scared about problems that may not exist in Australia, but many are scared about problems that barely exist in America.

On the other hand, while global flows of information and fears may have been encouraged by multinational media organisations, global flows of people have not. According to Mukherjee (1999), the Australian media has shown a preoccupation with news about crimes by migrants, relaying some outlandish claims that some migrant groups are criminal by nature, or that criminals are entering Australia and our controls may not be working. For example, following the stabbing in October 1998 of a Year 9 student in the inner south-west of Sydney, a wave of concern developed about the presence of gangs in Sydney. Scott Poynting, Greg Noble and Paul Tabar (2001) reviewed press, radio and television coverage over 18 months. They argued that the media had given gang crime an ethnic rather than a class dimension. Over the period, journalists harassed ethnic communities, portraying violence as the responsibility of gangs whose members were out of control and un-Australian. Media coverage both reported and supported aggressive policing of ethnic youth.

Nicholas Cowdery, Director of Public Prosecutions for New South Wales, has been critical of the way that State's media has blamed Vietnamese Australians for Sydney's drug problems:

> "Let us not encourage the witch-hunts conducted by talkback and the tabloids with their vested interests in looking at the world in black and white. Stories about goodness do not sell, except in churches and at award ceremonies. Stories about evil are lapped up. They are easy sensational fodder for talkback. And nasty drug stories are open to the stroking of other latent prejudices and fears" (2001, pp 30-31).

Such crime stories have not been restricted to news programming. Similar stories may find their way into documentary series as well as to programs whose commitment to provide hard information may be repeatedly compromised by a desire to offer entertainment.

INFOTAINMENT AND DOCUDRAMA

Over the last ten years, the media has shifted its coverage from politics towards crime. At the same time, the focus has moved from the daily news agenda towards editorially-generated items promoted days in advance, and from information-based treatments of social issues towards entertaining stories on lifestyles or celebrities (Turner 1999). Serious news items have given way to soft stories of drama, gore and titillation (Postman & Powers 1992; Rosenberg 1995) employing the conventions of entertainment and *popular culture*. Stories about crime sell well, be they on television news or in newspapers, true-crime and fiction books, film or television crime dramas – and even as the basis of video or board games. Crime is packaged for entertainment. On television, this has been reflected in the widespread use of Reality or *Tabloid TV*, a form of programming marked out by its relatively inexpensive production costs and its slick and undemanding style and content (Langer 1998; Jönsson & Örnebring 2001).

In Australia, real life crime stories have not only become the staple of the nightly news bulletins but have been elaborated into *Australia's Most Wanted, A Current Affair, Sixty Minutes, Cops, Emergency 000, Rescue 911* as well as television talk shows. These kinds of programs often *create* rather than *report* crime news. One technique has involved mounting a sting operation: hidden cameras may be focused on an abandoned car in the hope of filming looters or vandals, or taken clandestinely to a small repair business to reveal faulty repair practices.

Shows often seem to catch perpetrators red-handed. The presenter is filmed exposing the fraud and closing down the operation. The aim is performance and drama rather than convictions. Of course, only certain actions and people are identified as criminal. For example, the business-related crimes that are featured tend to be small local scams not the work of multinationals (Turner 1996b).

These ethically-dubious new formats arose in response to the new importance of ratings and the introduction of national networking which reduced the pressures for commercial stations to be accountable to their local audiences (Cunningham 1994; Cunningham & Miller 1994; Carpignano et al 1990):

> "Once the community service rhetorics which emphasised news and current affairs information responsibilities lose their purchase, the quest for ratings performance becomes the sole measure of success" (Turner 1996b, p 87).

Predictable and formulaic, these stories have a ready supply of apparent victims and perpetrators. John Fiske (1992) has argued that the more dramatic form of crime *representation* – particularly violent or sex crime – has for a long time been central to a great deal of tabloid journalism. Other critical analysts have noted that the *discourse* of news and current affairs have tended to graphically and pruriently report on certain acts of "deviance" while simultaneously self-righteously asserting the need for a return to more conservative forms of law and order (Rowe 1993).

The more overtly tabloid programs such as *Hard Copy* or *Inside Edition* are still favourites on cable and satellite television but are no longer screened on Australian broadcast television, possibly because their content primarily dealt with American material. Other current affairs programs, such as *A Current Affair* and *Today Tonight* still rate well, continuing to use stories which stress the ordinariness of the perpetrator and victims while emphasising drama and widespread danger.

But there are also some television programs that challenge conventional ways of representing real crime. The ABC television documentary series, *Bad Behaviour*, for example, was screened in 2001 and explored the view of offenders:

> "The two hardest things I live with is the fact that I've done it and the fact that I don't know why I've done it. It seems something out of a movie. I felt like I was in a movie." (David, convicted of attempted murder).

The observations and confessions of the offenders were shown publicly and then discussed by the audience in the interactive forum online. Many of the ethical concerns of discussing criminality were raised online. Several critics noted that the program perpetuated a distinction between *law-abiding us* and *deviant others* however much it sought to "present a rare and revealing glimpse of criminality in the real world".

News stories or discussions about real crime in the print media or on television can speedily find themselves on commercial talkback radio. Here, populist discourses of crime amplify and reflect fears of crime. Provocatively arguing that they are representing the "general public" in raising "difficult" issues, several of the more outspoken, predominantly right-wing radio talkback hosts, such as John Laws, Stan Zemanek and Alan Jones, use this forum as a vehicle to pronounce authoritatively about crime and law and order issues. Their authoritative stance and entrenched views are no doubt part of their appeal (Cunningham & Turner 2001). Here, for example, is the way that one talkback host linked crime and ethnicity:

> "There are bad things that we've been hearing lately connected with immigration; we've been hearing about extortion attempts; we've been hearing about kidnapping. Let's not mess around, there are certain crimes peculiar to certain cultures, and these that I mention are simply Asian crime" (John Laws, 9July 1996 cited in Appelton 1999, p 87).

Although such programs are firstly about entertainment and ratings, they are also designed to make the listeners feel that they are supported and not alone. Commentators such as Laws offer reassurance and confirmation to their listeners, even when they self-deprecatingly and accurately acknowledge that they are uninformed about a topic (Appelton 1999).

In general, tabloid journalism portrays criminality as the result of an individual's defective personality rather than having clear social, economic or political origins. This representation of the criminal as bad or mad rather than sad (see below, Chapter 4), together with the role of the crime story as a cultural moral tale for edification and reassurance, become particularly clear in fictionalised accounts of real crime.

Fiction differs from dramatised or sensationalised accounts of real crime but it draws on similar themes, narrative forms, characterisations and perceptions. Sometimes lines between fact and fiction become difficult to distinguish when a real event is fictionalised. For example, the tragic tale of Leigh Leigh, a 14 year-old girl from Stockton near Newcastle in New South Wales, has been represented in various ways. On 3 November 1989, her body was discovered among sand hills behind Stockton's beach. She had been sexually assaulted and murdered following a beach party. By 1994 there had been at least 39 articles in the *Newcastle Herald*, 10 articles in the *Sydney Morning Herald*, and extensive television and radio coverage. A book by a local criminologist, Kerry Carrington (1998), followed as did reports by two State inquiries (New South Wales Crime Commission 1998; Police Integrity Commission 2000). The event also inspired a play, *A Property of the Clan* (Enright 1994) and a film, *Blackrock* (1997).

Carrington (1998) explored the negative responses of some members of the Stockton local community to the play and the film. She noted that the murdered girl's mother had protested that the film had exploited the death of her daughter. Although the producer insisted that the film was not the Leigh Leigh story, the movie included scenes shot on locations in Stockton and replicated details of Leigh's murder. Carrington (1998) found the blurring between fact and fiction troubling. The film was:

> "too close in some respects to the crime, yet too distant in others. It seemed to be having a bet each way, evading the more confronting issues, the unsettling overlap between police culture, local culture and sexual violence" (p 155).

Although it is more common for films to use fictional crime than real events, as they are easier to portray and adapt, *Blackrock* was not the only Australasian film to use a fictionalised account of a real crime to explore moral and social issues. Two other well known examples, *Heavenly Creatures* (1994) and *Chopper* (2000), explored the nature of evil although in very different styles. *Heavenly Creatures* told the true story of two New Zealand teenager girls whose intense relationship in the early 1950s disturbed their families. When their intimacy was forbidden, they murdered one of their mothers. This story was seen as particularly disturbing because it challenged cherished pre-conceptions of childhood as innocent. The second film told the story of Mark Brandon "Chopper" Read, a notorious hardman who had been convicted of attempting to abduct a County Court judge, as well as of various shootings, assaults and arson. A self-confessed murderer, he became well known as a celebrity criminal as a result of seven best-selling books written during 23 years in prison in Victoria and Tasmania (see, for example, Read 1991).

Although based on real events, in each case the need to adapt and make concessions for the screen meant that, as in *Blackrock*, reality had to be represented in particular ways. Real time was reduced to maintain the drama of screen time. Hand-held cameras and gritty film footage replaced more polished film work. None of these directors attempted to make a documentary. Instead, Jackson, Dominik and Vidler used crime as their basis to explore wider social and moral issues – what makes a person act in this way; what is the nature of evil?

Problems arise because audiences tend to blur the lines between fiction and fact, between the real historical events and their fictional, dramatised counterparts. And then there are the ethical issues. In a fictionalised account of real people, film-makers have to be aware of their responsibilities toward these real perpetrators and victims. Following both *Blackrock* and *Heavenly Creatures*, people who were portrayed in the films were critical of the way their lives had been represented by film-makers.

Figure 3.3 *Hardman, self-confessed murderer and author, Mark Brandon "Chopper" Read*

Source: Newspix

Sometimes the purpose of fictionalising real crime is to highlight what the film-maker believes has been a miscarriage of justice. In this situation the representation of the crime itself is less important in the narrative than showing attempts to solve the murder and bring about justice. One example of this kind of agenda was the 1988 film *Evil Angels*, based on the death of Azaria Chamberlain. On a camping trip to Uluru, a sleeping baby was snatched from a family tent. The mother, Lindy Chamberlain, caught a glimpse of a dingo emerging and running off from the tent. Her conclusion was that the animal had killed her child. Although the Chamberlains claimed they were innocent, their lack of visible distress during television and radio appearances, and the lack of the child's body were interpreted as signs by the media and the public that they were guilty of murder. After two years of harassment, speculation and investigation, Lindy was eventually charged with murder and her husband, as an accessory (Bryson 2000). The film explored the earlier events but also Lindy's struggle for justice. It also depicted Lindy Chamberlain's eventual pardon. Although this exoneration had occurred several years before the film had been made, the film helped bring about a wider public recognition of the Chamberlain's innocence and the way the media had promoted injustice (Johnson 1984).

Over the past decade, the reporting of real crime has drawn increasingly upon the conventions of entertainment, tabloid media and reality TV programming. The result has been greater reliance on drama, graphics, sensationalism and a narrowing focus on particular kinds of criminal behaviour. However, underpinning the drama and the entertainment are the lives of real people. The shifts in the nature of reporting raise serious ethical questions about why and how the media reports crime. Is it to educate, or to agitate (for example, by highlighting miscarriages of justice) or is it simply another marketing device to attract a broader audience?

CONCLUSION

In this chapter, we have examined the ways in which crime has been portrayed across a range of media, for both news and entertainment, in film, television, video, radio and the internet. Using the example of the Bankstown story, we have argued that such portrayals are not independent of the technical, practical and ideological needs of the people responsible for making and, to some extent, receiving those images. This means that images change and reflect the current political concerns of the time and the culture.

Various genres and formats all tell moral stories about crime and its consequences but as the emphasis falls less on information and more on entertainment, representations of crime increasingly depend on visual imagery, drama and violence. As crime reporting has moved from news to entertainment, we have also seen a move away from the specific social contexts and individuals towards a greater reliance on stereotypical and popular generalisations about the causes and the nature of crime. This may have serious consequences for the groups and places that are identified as criminal.

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QUESTIONS

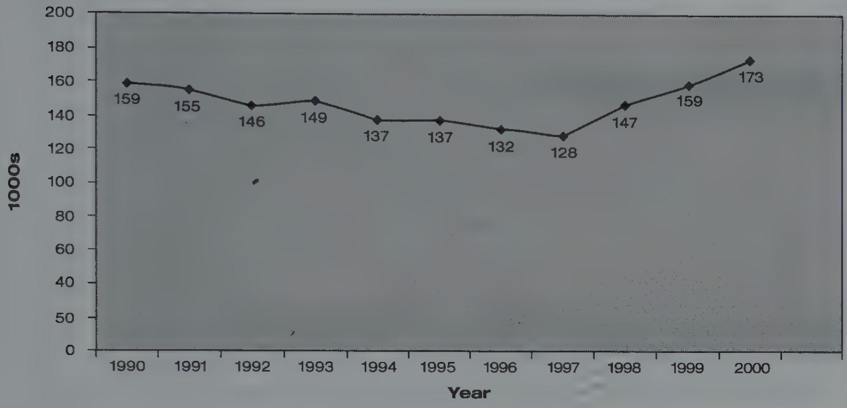

Figure 3.4 *Chart of crime rates fluctuating in Rundown City.*

1. **Before the Seminar**
   You are a journalist on the *Rundown Express*, a sleazy tabloid. Your editor has ordered you to write a 500-word sensationalist article for the newspaper describing the increase in crime in Rundown. No one has returned your telephone calls. You only have the chart and your imagination. Your deadline is fast approaching.

2. **At the Seminar**
   Drawing on the material in Chapters 2 and 3 of this book, write a letter to the editor of the *Express* as a criminologist pointing out the problems with the article, and explaining how the figures should have been interpreted. The editor only prints letters of 500 words.

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Notes

[1] This article formed part of series of three articles run by the *Sydney Morning Herald* in 1995 and is reprinted with the permission of that paper.

PART 2

Understanding crime

4 Individual Explanations for Crime
Stewart & Wortley

5 Social Explanations for Crime
Halsey

6 Inequalities of Crime
Daly & Lincoln

7 Crime in the Streets
Ross & Polk

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Sutton & Haines

9 Crime and the Home
Stubbs

10 Crimes Across Borders
Goldsmith

CHAPTER 4

INDIVIDUAL EXPLANATIONS FOR CRIME

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KEY WORDS

- behaviourism
- cognitive
- determinism
- free will
- nature or nurture
- pathological
- positivist criminology
- psychoanalysis

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Introduction

Criminology is a multidisciplinary enterprise, using theories from the disciplines of sociology, psychology, law, politics, history and economics to explain crime. Most theoretical insights into the causes of criminal behaviour come from the first two of these disciplines, sociology and psychology. This chapter will focus on the contributions that psychology has made to criminology and our understanding of criminal behaviour. The contributions from sociology are examined below in Chapter 5.

Psychology and sociology have very different approaches to explaining criminal behaviour. Psychological approaches examine the question: what is it about *individuals* and their experiences that produce criminal behaviour? Psychologists are concerned with how an individual's biological make-up, personality, upbringing, current circumstances and so forth produce criminal behaviour. In contrast, sociological perspectives on criminal behaviour examine the question: what is it about *society* that produces crime? Consider, for example, the case of rape. A psychological analysis will typically examine an individual rapist's characteristics. The analysis may focus on the way a rapist thinks, a rapist's family and childhood experiences and whether or not there is any evidence of psychological disorders such as antisocial personality disorder or sexual dysfunction. On the other hand, a sociological analysis of rape may consider factors such as societal attitudes towards women, cultural norms with respect to male-female relationships, the power differential between men and women in society, and so forth.

Sociological and psychological theories are often depicted as separate or competing explanations of crime. Alternatively, they can be thought of as different views that provide complementary perspectives on criminal behaviour. In recent years, psychology's contributions to criminology have played second fiddle to sociology. In this chapter, we hope to redress this imbalance by exploring psychology's contributions to understanding crime. We argue that psychological theories have much to offer in understanding criminal behaviour.

Psychology has a range of approaches to understanding human behaviour. These approaches include biological, personality, behavioural and cognitive explanations for behaviour. Within each of these approaches is a myriad of theoretical ideas, concepts and frameworks. For each approach, we have identified the major theoretical frameworks used in explaining crime. However, before examining these theoretical frameworks we will examine the historical roots of and current philosophical debates about individual explanations for crime.

HISTORICAL PERSPECTIVES

There exists a long history of trying to understand, and do something about, individuals who commit criminal behaviour. Criminology emerged as a field of study through the 18th and 19th centuries. Before this, spiritual explanations of crime formed the basis of criminal justice policies. These explanations were based on the notion that people were basically good and without sin. People who committed crimes were violating God's laws and committing sin (Vold, Bernard & Snipes 1998). In the 18th century, these spiritual ideas were challenged by a new philosophical tradition known as *social contract*. Social contract thinkers such as Hobbs, Locke, Montesquieu, Voltaire and Rousseau argued that people were basically selfish. However, society would be very unpleasant if everyone pursed her or his own interests. Accordingly, everyone should agree not to be selfish and grant the state the rights to use force to maintain the contract.

Cesare Beccaria (1738-1794) applied social contract principles to crime and criminal behaviour in his 1764 book *Dei Delitti e Delle Pene (Of Crimes and Punishments)*. Responding to the idiosyncratic sentencing practices and the barbaric punishments of the time, Beccaria proposed that laws should determine the punishments imposed and that these punishments should be proportionate to the harm the crime caused to society. Furthermore, because he believed that people behaved in logical and rational ways, he suggested that laws should be clear and simple and that punishments should be promptly administered. Many crimes would be prevented as people understood the outcome of their behaviour and chose not to commit the crime. Beccaria was the first to consider, in any systematic way, the causes of criminal behaviour. However, he still believed that people are fundamentally guided by reason and choose how they behave. Accordingly, as long as the punishments exceeded the pleasures gained from committing the criminal act, people would refrain from crime.

While Beccaria's book marked the beginning of criminology as a field of study, Cesare Lombroso (1835-1909) is credited as the father of modern criminology. Lombroso was a 19th-century Italian physician and criminal anthropologist. He spent much of his time studying prisoners and in his 1876 book, *L'Uomo delinquente (The Criminal Man)*, he argued that criminals were genetically distinct from the non-criminal population. He incorporated the then new Darwinian evolutionary principles into his theory and suggested that criminals were throwbacks to an earlier evolutionary stage. In later writings, Lombroso modified this strong biological stance and concluded that about one-third of offenders were born criminals; the other two-thirds acquired criminality through some environmental contact.

With an emphasis on biology rather than personal choice, Lombroso clearly believed that crime was outside the individual's control and caused by biological forces. Lombroso hoped to identify "born" criminals, whose crimes were biological in origin. These criminals could not be held responsible for their behaviour and therefore needed to be isolated from society. On the other hand, criminals whose crimes were social in origin could be rehabilitated. Modern biological and evolutionary theories have challenged many of Lombroso's explanations. However, Lombroso's lasting legacy to modern criminology was his emphasis on data and theory – *positivist criminology*. Although Lombroso's research methods now seem rather primitive, he moved the study of crime away from a purely philosophical and religious debate and towards an empirical scientific study.

Work searching for physical differences between criminals and non-criminals continued well into the 20th century (Goring 1913; Sheldon 1949). This research has been superseded by modern biological theories of behaviour, which focus on the interactions between biology and the environment. However, as the 20th century progressed, individual-level perspectives generally in criminology receded in favour of sociological perspectives. While psychology as a discipline flourished, the contributions of psychology to criminology tended to involve the application of general theories of behaviour rather than the development of crime-specific theories. We shall discuss these contributions in more detail later in this chapter.

PHILOSOPHICAL DEBATES

One way to distinguish among the different psychological approaches is to categorise them according to philosophical beliefs about the fundamental nature of human behaviour. There are four perennial debates among psychologists:

- free will or determinism
- nature or nurture
- normal or pathological
- person or situation.

Free will or determinism

Most people intuitively adhere to a philosophy of free will, believing that human beings are free to make choices and guide their own destiny. Most psychological theories, however, are based on the assumption of determinism. Specifically, the theories assume behaviour is ultimately *caused* by factors outside the individual's control. Free will is thought to be just an illusion and every action a person performs can be traced to some prior biological or environmental factor. Recently, some theorists have proposed the concept of *soft determinism*. Soft determinists argue that because human beings are capable of conceptual thought they have some limited capacity to make choices and control their own behaviour. Our laws and courts are rooted in the notions of free will and individual responsibility. However, modern understandings of the causes of criminal behaviour are typically based on the philosophy of determinism.

Nature or nurture

To the extent that behaviour is determined, the nature/nurture debate refers to whether the causes of behaviour are biological (nature) or environmental (nurture). Most contemporary psychological theories accept, to varying degrees, that behaviour is a combination of biological and environmental factors (sometimes called a *biosocial* perspective). Consequently, this debate is not about whether crime is caused by nature or nurture, but about the relative importance of each. For example, unlike Lombroso, few modern biological theorists would argue that there is a *born criminal*. Instead they would suggest that certain people are born with characteristics which, in combination with the appropriate environmental conditions, increase the chances of criminal patterns developing.

Normal or pathological

Another way to categorise psychological theories is in terms of the degree to which they seek to pathologise criminal behaviour. This is also known as the *mad/bad debate*. On the mad side of the argument are the biological approaches and some of the personality theories that consider there is something wrong with offenders that makes them different from non-offenders – that they are somehow sick. In contrast, behavioural, cognitive and some personality theorists generally view criminals as normal but bad. That is, they believe that raping and robbing banks are unacceptable behaviours in our society but argue that these behaviours are explainable given the life experiences of the offender. They believe that criminal behaviour, like any other behaviour, is acquired through the individual's experiences – crime is a normal reaction to what is an abnormal set of experiences.

Figure 4.1 *Tilly Devine (right) and Kate Leigh (left), two of Sydney's leading underworld rivals, greet each other in 1948.*

Source: Newspix

Person or situation

Finally, psychological theories vary in the extent to which they see an individual's behaviour as constant from one situation to the next. This is referred to as the *cross-situational consistency debate*. Biological and personality theories generally seek to identify stable characteristics or *dispositions* in individuals that produce consistent behaviour across situations; behavioural and cognitive theories give greater emphasis to the interaction between the characteristics of the individual and the situations in which the behaviour occurs. According to this perspective, people's behaviour is highly variable and depends upon where and with whom they interact. While a great deal of effort has gone into the study of criminals, criminal behaviour is often facilitated by immediate circumstances. For example, merchandise that is displayed outside a shop may tempt people to shoplift when they may not have otherwise considered doing so.

PSYCHOLOGICAL THEORIES OF CRIME

In this section, we examine four different psychological approaches to understanding criminal behaviour. Within each approach many different theories have been proposed. These theories each have different implications for the prevention of crime or the rehabilitation of criminals.

Biological Approaches

One of the most consistent findings in criminological research is that criminal behaviour is concentrated in families and transmitted from one generation to the next (Robins 1966; Farrington, Gundry & West 1975; Farrington, Barns & Lambert 1996). In explaining this phenomenon, biological explanations emphasise the transmission of genes from parents to children. Conversely, environmental explanations concentrate on children either learning criminal behaviour from their criminal parents or not learning that criminal behaviour is wrong. Whereas biological theories were the predominant theories of crime in the 1800s they became very unpopular in the 20th century. People were horrified at Adolf Hitler's use of the alleged inferiority of certain groups such as Jews, homosexuals and the intellectually disabled to justify his efforts to eradicate them by sterilisation or murder. Consequently, many researchers shied away from research that examined biological differences between individuals and concentrated on the social and environmental causes of behaviour.

In the last two decades, there has been a resurgence of interest in biological theories of human behaviour including criminal behaviour. Research such as the Human Genome Project, which has mapped the human gene structure, and advances in brain mapping technology such as neuroimaging, have increased our understanding of the complex and dynamic interactions between biology and behaviour. From this research we now understand that there are no one-to-one mappings between genes and behaviours. Rather, we can identify some biological links that increase the *propensity* that certain behaviours will occur. We all have genes that increase our propensity for some undesirable trait or disorder. However, whether or not the undesirable behaviour is expressed depends on whether we experience the relevant environmental risks.

Much of the research trying to tease out the relative contributions of genetics and the environment to criminal behaviour has examined twins and children adopted away from their biological family. Twin studies compare identical twins – twins who develop from a single egg and therefore have identical genes – and fraternal twins – twins that develop from separate eggs and do not have identical genes. These studies examine *concordance* rates – the probability that if one twin is criminal the other twin is also criminal. If criminal behaviour has a genetic component, the concordance rate for identical twins should be higher than the concordance rate for fraternal twins. Raine (1993) summarised the results of ten studies examining the genetics of adult crime using twins. All studies showed greater concordance for identical twins than for fraternal twins. The average concordance rate across the studies was 51.5% for identical twins and 20.6% for fraternal twins. This indicates that there is a degree of genetic predisposition for crime. However, the research methods used in twin studies have been criticised (Raine 1993). For example, many of the studies used inaccurate methods to determine if the twins were identical or fraternal. The only accurate way to determine identical twins is through DNA fingerprinting which involves new and expensive technology.

Adoption studies examine children in relation to their natural parents (genetically related) and their adopted parents (no genetic relationship) to try and tease out the genetic relationship to crime. If genetics have no influence on children, children raised apart from their biological criminal parents should be no more likely to be criminal than children raised apart from biological non-criminal parents. Raine (1993) examined the results of 15 studies carried out in Denmark, Sweden and the United States. Almost all studies agreed that there is some genetic predisposition to crime. Adopted children with criminal biological parents are generally more likely than adopted children with non-criminal biological parents to commit crimes.

More recent research has identified biological precursors for a wide range of antisocial behaviour, not just criminal behaviour. For example, hyperactivity in early life (a medical condition) has been linked to a range of antisocial behaviours in later life such as conflict with authority, aggressiveness, poor peer relationships, low school motivation, and alcohol abuse (Silberg et al 1996). We are now aware that there is a far more complex interrelationship between the person and their environment than the classic nature/nurture debate would imply. Whereas there is no gene for violence or for crime, research has indicated that there is a relationship between genes and criminal behaviour. However, this propensity appears to be greater for aggressive behaviour and also for antisocial behaviour that persists into adulthood (DiLalla & Gottesman 1989). It appears that environmental factors are very important in transient (but possible severe) antisocial behaviour during childhood and adolescence but play a smaller role where the behaviours persist into adulthood (Rutter, Giller & Hagell 1998). This behaviour has a stronger genetic component.

Accepting that there is no direct relationship between genes and crime, the pathways between an individual's genetic makeup and behaviour appear to be very complex. Biological risk factors that seem to be in some way related to antisocial behaviour include temperament, hyperactivity, impulsivity, autonomic arousal and hormonal influences (Rutter, Giller & Hagell 1998). Currently, relatively little is known about how these genetic effects are mediated or brought about. Research is needed to understand how these genes interact with one another and what the environmental influences are that increase the propensity towards antisocial behaviour.

Personality Approaches

Personality theorists are interested in individual differences among people. When applied to criminal behaviour, personality theories try to explain what it is about the psychological make-up of offenders that makes them different from non-offenders.

One of the most influential personality theorists, Sigmund Freud (1856-1939), developed the first comprehensive theory of personality to explain the abnormal or pathological behaviour he saw in patients. His psychoanalytic theory of personality proposed that powerful unconscious psychological forces originating in early childhood influenced human behaviour. Freud proposed that the personality had three parts: the id, the superego and the ego (Hall & Lindzey 1970).

- The *id* is the unconscious part of the personality and contains our sexual and aggressive instincts. The id operates on the pleasure principle, meaning that it searches for immediate satisfaction regardless of society's rules or the rights and feelings of others.
- The *superego* develops as individuals internalise the rules, inhibitions, and values of their parents and culture. The superego seeks to control the impulses and instincts from the id.
- The *ego* develops as parents, teachers, and others place limits on the expression of the id impulses. The ego operates on the reality principle and works out a compromise between the desires of the id and superego constraints imposed by the real word including society's laws.

Freud believed that the id, ego and superego are constantly at odds with one another, creating intra-psychic conflicts and resulting in anxiety. He proposed a number of processes or defence mechanisms – including *repression*, *displacement* and *rationalisation* – to keep threatening memories, thoughts and impulses from consciousness and protect the ego from being overwhelmed by anxiety. Repression occurs when a person actively pushes unpleasant or anxiety-provoking thoughts or desires out of consciousness. However, these thoughts continue to influence their behaviour. Currently, there is substantial debate about whether or not sexually abused children can as adults have repressed the memories of the abuse (Loftus & Ketcham 1994; Pope & Brown 1996). Displacement occurs when a person redirects unacceptable thoughts and behaviours onto an acceptable substitute. For example, a person who has a conflict with their boss at work may take out their hostility on their family when they get home. Rationalisation is the process of finding an acceptable reason for engaging in unacceptable behaviour. For example, a rapist may justify his rape by claiming that he could not control his sexual urges. In some situations, these defence mechanisms may be adaptive in helping people function. However, over-reliance on them will result in problems. Psychoanalytic theorists believe that the type, number and intensity of the intra-psychic conflicts and the defence mechanisms required to deal with them shape personality and mental disorders (Hollin 1989).

Freud did not spend much time addressing the psychodynamic roots of criminal behaviour. A group of American psychiatrists in the 1930s to 1950s was active in applying Freud's principles to our understanding of crime. Psychiatrists such as Fromm (1941) and Abrahamsen (1944) proposed that the crime is a symptom of an underlying disorder which occurs because criminals have weak egos, weak or absent superegos, and strong ids. Criminals are so dominated by id impulses they are unable to control impulsive and aggressive tendencies. Having little or no superego development they lack a conscience and have no empathy for others. As they have weak egos they can be easily influenced towards criminal behaviour by peer pressure. There are now a bewildering array of psychoanalytic concepts and explanations to explain different forms of crime. At times the explanations appear completely contradictory. For example, some offenders are said to have a weak superego (Aichhorn 1963), such that they feel little or no guilt, whereas others have strong superegos, feel extreme guilt and commit crimes in order to be punished (Bromberg 1965). Similarly, offenders may, on one hand, be seen to possess a weak ego, causing them to be impulsive and bad-tempered, or to possess strong egos, causing them to be manipulative and to find excuses for their behaviour. Such use of theoretical constructs seems to invite the criticism that psychoanalytic theorists seem to go to great lengths to make the theory fit the phenomenon it seeks to explain.

These days Freudian theory is criticised on a number of fronts (Fisher & Greenberg 1977; Kline 1981). One of the most significant criticisms of psychoanalytic theory is that it relies on complex, abstract, unobservable processes: what exactly is an id? how can we know that it exists? Other criticisms are related to the scientific method used by Freud and other psychoanalysts. Psychoanalytic theories rest on the questionable validity of *introspection*—subjective and inward-looking appraisals of reality. Psychoanalytic theories of crime lack empirical support and there is no convincing evidence for the effectiveness of interventions with offenders based on lengthy and resource-intensive psychoanalytic theories. Nevertheless, even the most vocal critics of psychoanalytic theories would probably agree that these theories have had an enormous impact on the fields of psychology and psychiatry. More than any other psychological theory, psychoanalytic theories have influenced the popular conceptions of both normal and abnormal human behaviour.

Psychoanalysis is not the only personality approach to understanding criminal behaviour. Many other studies have attempted to use personality questionnaires such as the Minnesota Multivariate Personality Inventory (MMPI) and the California Personality Inventory (CPI) to try and discriminate between offenders and non-offenders. Reviewing this research, Arbuthnot, Gordon & Jurkovic (1987) concluded that, notwithstanding the methodological limitations, there was no evidence of a relationship between the multivariate inventories and criminal behaviour. Other personality variables that have been considered in relation to crime include time orientation, impulsivity and delay of gratification, sensation seeking, locus of control, self-esteem and self-concept and aggression. Again the results of such research are unclear, leading Feldman (1993) to conclude that future work on personality variables should focus on the interaction between these variables and a person's environment.

Behavioural Approaches

Biological and psychodynamic approaches dominated psychological theories in the early 1900s. By the 1950s, the influence of behavioural (or learning) theories began to be felt. The behavioural approach offered a radically new perspective on human behaviour that shifted attention away from internal biological and psychological forces to factors outside the individual. The central thesis of the behavioural approach is that almost all behaviour is learned. There are now three principal models of learning – *classical conditioning*, *operant conditioning* and *social learning*. The first two conditioning theories are traditional behavioural theories. Theorists who adhere exclusively to classical and operant conditioning are sometimes called radical behaviourists. Radical behaviourism treats the mind like a black box, something that is inaccessible to scientific study and therefore not to be included in any theory of behaviour. The third theory – social learning theory – is more recent and presents a less extreme model of behaviourism. Unlike radical behaviourists, social learning theorists are interested in what happens inside the person.

Classical conditioning

Ivan Pavlov (1849-1936) first scientifically demonstrated classical conditioning in his famous experiments with dogs. He showed that if a bell were rung at the same time that the dog was presented with food, eventually the dog would come to associate the bell with the food and salivate when the bell was rung alone. Classical conditioning is a passive model of learning – the dog did not have to do anything to learn the connection between the bell and the food; the learning occurred simply through their chance pairing.

For classical conditioning theorists, the environment can be broken down into a complex and subtle array of behaviour-evoking cues that govern the way that we act. Like Pavlov's dogs, offenders respond helplessly to these cues and may not even be aware of their effects. For example, Berkowitz (1983) found that the sight of a firearm may elicit feelings of aggression. Berkowitz hypothesised that, through their repeated association with violence, firearms automatically conjure aggressive images and moods. Classical conditioning principles have been widely used in therapeutic interventions. In particular, aversive therapy – where a target behaviour is associated with an unpleasant experience – has been used to treat repetitive behaviours such as alcohol and drug abuse and sexual deviance. For example, to unlearn the association between children and sexual arousal a child sex offender may be shown pictures of children paired with mild but painful electric shocks.

Operant conditioning

Operant conditioning is most closely associated with the work of B F Skinner (1904-1990). In operant conditioning, behaviour is shaped by the consequences it produces. The consequences of behaviour can be rewarding (and therefore reinforced) or unpleasant (punished). Skinner's original experiments investigated how pigeons learned to peck at a bar in order to receive a food pellet. Unlike classical conditioning, operant conditioning is an *active* process – the pigeon does not receive the pellet until the desired behaviour is performed. If, after some time, the reward ceases to occur when the behaviour is performed, eventually the behaviour will extinguish. Most radical behaviourists accept the validity of both classical and operant conditioning. However, these days operant conditioning is generally seen to be the more dominant of the two processes.

Reinforcement and punishment can be either positive – the application of a consequence – or negative – the removal of a consequence. It is easy to see how criminal behaviour might develop as a result of operant conditioning. Most crimes involve rewards in some way – stealing is positively reinforced by the goods acquired, rape is positively reinforced by the sexual gratification obtained, murder might be negatively reinforced by the elimination of someone unpleasant (as far as the offender is concerned at any rate). On the other hand, most of us refrain from committing crime because of the positive punishments (such as fines, imprisonment) and negative punishments (such as the loss of job) we associate with getting caught.

Social learning theories

Social learning theory presents a kinder, less extreme side of behaviourism. Albert Bandura (1927-) argued that a great deal of human behaviour is learned not through direct experience, as the classical and operant conditioning theorists suggest, but *vicariously* through the process of *modelling*. That is, he argued that we could learn through observing others and imitating or avoiding their behaviours. We do not need to be run over on a busy highway to know not to leap in front of the traffic. Social learning theorists do not reject classical and operant conditioning, and in fact, these processes remain crucial in social learning theory. Thus, social learning theory is really an extension of traditional behavioural theory.

As far as crime goes, social learning theorists highlight the acquisition of criminal behaviours through observation and imitation. In a classic demonstration of modelling influences, Bandura and his colleagues (1963) found that children who observed adults behaving aggressively towards a large blow-up doll were more likely to act aggressively towards the doll than other children who observed adults who ignored the doll or who played with other toys. The models for criminal behaviour may be significant people in the offender's life – such as parents and friends – or they may be presented to the offender via the media. A great deal of research has examined the effects on children of viewing violence on television. While most scientists are convinced that children can learn aggressive behaviour from television, they also point out that parents have tremendous power to moderate that influence (Gerbner & Gross 1980; Eron 1992; Australian Psychological Society 2000).

In addition, Bandura stressed that many of the rewards offenders may receive for committing crime take the form of social reinforcers rather than tangible gains. For example, within a delinquent gang approval by peers for having engaged in theft may be more important in terms of reinforcement than the goods actually stolen. Alternatively, for most of us the disapproval by family and friends that would follow our conviction for theft would probably be more painful than any official sanction we might receive.

Cognitive Approaches

Cognitive approaches are interested in the ways that humans process information, reason, problem solve and make decisions about how they are going to behave. Cognitive theories are premised on the belief that if we understand the way people interpret their world we will understand why they behave in a certain way.

Some cognitive models have been developed within behavioural and social learning frameworks. Bandura argued that for human beings to learn through modelling, they must possess the ability to anticipate the consequences of behaviour that they have not yet performed. This ability to look into the future suggests a role in behaviour for cognitive processes – thoughts, beliefs and perceptions. Because of the critical role for cognitions in behaviour, Bandura (1985) now describes his theory as a *social cognition theory*. Social cognition theorists stress that the way a person thinks about what is happening is as important in determining her or his behaviour as what actually happens. That is, through cognition – our self-talk and imagination – we reconstruct an internal environment in our heads that has the power to reinforce, punish and stimulate us in ways similar to actual experience. These learning principles have been applied to psychological treatment in cognitive behaviour therapy (CBT), a popular model of psychological treatment of offenders in Australia, and widely practised around the world (Porporino 1995; Marshall 1999). Unlike psychoanalysis, which relies on complex notions of unconscious processes and symbolic meanings of behaviour, CBT deals with presenting problems on the basis of their face value. Through therapy, the problem behaviour is changed by challenging what triggers (antecedents) and reinforces (consequences) the behaviour. At a cognitive level, CBT aims to identify problematic patterns of thinking (thinking that appears to support a problem behaviour) and to challenge this thinking, replacing negative, unhealthy, or distorted thoughts and beliefs with positive healthy and realistic thoughts.

Other cognitive approaches have focused on the moral reasoning of offenders. These cognitive theories are interested in the values and attitudes that individuals hold, how these values and attitudes are developed and how they are used to guide behaviour. The main psychological theory examining these issues is Kohlberg's (1964) moral development theory. Kohlberg proposed that children develop the capacity to engage in increasingly sophisticated forms of reasoning and become moral in stages. He proposed a hierarchical theory of moral reasoning consisting of three levels – pre-conventional, conventional, and post-conventional (Kohlberg 1984). As an individual passes through each level, their moral reasoning becomes increasingly sophisticated and abstract (see Table 4.1 below).

Kohlberg believed that individuals could only progress through these levels one stage at a time. They could not, for example, move from an orientation of selfishness to an understanding of ethical principles without passing through the good boy/nice girl stage. Kohlberg argued that most people only make it to the conventional level of moral development.

Kohlberg also suggested that many offenders are stuck at the pre-conventional level where the reasoning is largely in terms of immediate personal gains and losses. Indeed, Arbuthnot & Gordon (1986) found that there are differences between delinquents and non-delinquents in moral reasoning. However, not all non-offenders are morally mature and not all morally immature people offend. Additionally, Kohlberg focused on moral reasoning not moral behaviour. The moral stage that an individual is at may *not* predict how they actually behave (Damon 1999).

Table 4.1 *Kohlberg's Stages of Moral Reasoning*

Stage	Moral reasoning	Attitude to crime
pre-conventional	motivated by self-interest and justified in terms of concrete rewards and punishments	explain their non-involvement in crime in terms of a fear of being caught and punished
conventional	focus on social rules and a concern to be portrayed as a good boy or a nice girl	follow social and legal rules so that other people will not think badly of them
post-conventional	motivated by universal ethical principles of justice, reciprocity, equality, and respect	do not commit crime because they understand the fundamental wrongness of the behaviour

Social learning theorists have offered an alternative approach to Kohlberg's moral development theory – *cognitive disengagement*. This theory proposes that many offenders are morally no different to non-offenders but that they have a number of cognitive strategies that enable them to disengage their moral beliefs. Using these strategies they can justify the rightness of their actions (Bandura 1990; Bandura et al 1996). The strategies involve re-construing the conduct, obscuring the personal causal agency, misrepresenting or disregarding the negative consequences of the action, vilifying the victims, and maltreating them by blaming and devaluing them (Bandura 1990; Bandura et al 1996). Rogers (2000) provides examples of moral disengagement strategies used by computer hackers who argued that their activities are purely an intellectual activity, that information should be freely available to everyone, that they never intentionally damage any files, that companies have or should have backups of their data and systems. Other hackers dehumanise the victim by referring to them as multinational corporations, or just networks and systems.

D.E. DUGAN. 1.6.46.
183 281

Figure 4.2 *Police shots of famous New South Wales criminal Darcy Dugan in 1946.*
Source: Newspix

CONCLUSION

In this chapter, we have presented psychological theories of crime as complementing sociological theories. We argued that together the two perspectives provide a more complete picture of the factors producing criminal behaviour. However, unlike popular culture and criminal justice policy, criminological research tends to be more heavily influenced by sociological theories than psychological ones. Indeed, psychological perspectives on crime are severely criticised by many sociological criminologists. At the heart of the criticisms is the belief that psychological analyses of crime unfairly target individuals and ignore factors such as social inequality that are seen as the "root causes" of crime. In focusing on individual differences, psychological approaches are seen to stigmatise vulnerable and disadvantaged people in the community, allowing unjust social systems to continue unchallenged. At worst, individual-level interventions are seen as discriminatory and represent an attempt by the state to exercise social control over its citizens. At the extreme, individual-level research might be exploited to justify the suppression of racial and other minority groups.

We have argued that a psychological approach does not automatically assume pathology on the part of the offender nor does it ignore the social context of crime. Like the sociological approach, a great strength of the psychological approach is its commitment to empirical research and useful theoretical models. In this context, we believe that psychological approaches can provide rational bases for understanding and preventing crime.

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Dialogue Box 4.1

Bert

Bert is a 28 year-old male who has been found guilty of break, enter and stealing, and sentenced to four years' imprisonment. His offence involved a break-in at a small factory where $800 in cash, tools and equipment were stolen. Bert refuses to name the people involved, priding himself on not informing. On the night of the offence, Bert had gone by himself to his local pub and spent the evening drinking with two men he knew from a previous prison sentence. At closing time one man said there was a factory nearby that would be easy pickings. After some convincing, Bert agreed to go along. They took whatever goods they could carry and stored them in Bert's garage. As Bert was well known to police he had been immediately suspected of the crime. The police arrived the next morning, searched the garage and arrested Bert. Police considered Bert easily led and have a good idea who the other two men were but have no evidence to arrest them.

Bert had been out of prison for nine weeks after a 12-month sentence for possession of stolen property. He was living with his *de facto* wife and two children and employed casually as a builder's labourer. He had promised his wife that he would go straight but found it difficult and started to go out, mix with old friends and drink heavily. He is the third of four children. His eldest brother had been in trouble with the law but seems to have settled down. The other brother is serving a lengthy sentence for armed robbery. His younger sister is married to a man with a long criminal record. When Bert's father was not in prison, he drank heavily and was violent towards his wife and children. Bert's mother was an ineffectual parent with limited intellectual and social resources. Discipline was either absent or grossly excessive, with the children either allowed to run wild or beaten for trifling misbehaviour. When Bert was 14 he was sent to a boys' home for stealing and has been in and out of institutions. Consequently, he has little education and can barely read and write. He has never held a job for more than a few months. Most of his convictions are for property crimes although he has convictions for traffic and minor drug and assault offences.

Bert is resigned to his upcoming prison sentence. He has no fear of prison but does not want to be separated from his family and is worried that his wife may leave him. He cannot explain how things fell apart so quickly but blames the alcohol and the bad influence of his co-offenders. He is adamant that on the night of the offence he did not go to the pub with any intention to commit a crime. He thinks that his sentence is too long because he only stole from a factory not a private home, and the owner was probably insured. This time, he maintains, when he gets out of prison he will stay out for good.

QUESTIONS

1. How might Bert's criminal behaviour in Dialogue Box 4.1 above be explained by each of the four theoretical perspectives (biological, personality, behavioural, and cognitive) described in this chapter?
2. How does the psychological approach to explaining crime differ from the sociological approach?

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USEFUL WEBSITES

www.psychsociety.com.au/
Australian Psychological Society College of Forensic Psychologists

www.unl.edu/ap-ls/
American Psychology/Law Society

http://members.optushome.com.au/dwillsh/index.html
David Willshire's Forensic Psychology and Psychiatry Links

www.psywww.com/index.html
Psych Web Resources

www.forensicpanel.com/journal
The Forensic Panel Letter.

www.iay.org/
The Institute for the Study of Antisocial Behaviour in Youth.

CHAPTER 5

SOCIAL EXPLANATIONS FOR CRIME

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KEY WORDS

- crime
- causation
- social theory

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INTRODUCTION

Generally, explanations for crime have one of two focal points. The first, as the previous chapter mentioned, is the *individual* where the causes of crime are held to reside in the biological or psychological make up of particular *types of people* or in the *kinds of choices* that individuals "freely" make. While a focus on individual behaviour has merit, there is good evidence to suggest the causes of crime cannot be satisfactorily derived by reference to biology, psychology or wilful action alone. This has led to the emergence of a second focal point for explanations of crime – the nature of social relations, or, more simply, *society*. Here, crime is studied as an event that takes place within, and which is influenced by, particular structures (social, legal, cultural, economic) and conditions (at home, at school, at work). The task of this chapter, therefore, is to give a brief overview of some of the theories that attempt to explain crime in these and related ways. We begin with social learning theory and progress through strain, labelling, radical, feminist and postmodern approaches to crime. Of course, the relationships spanning social conditions and individual actions are extremely complex and this complexity can only be hinted at below.

SOCIAL LEARNING THEORY

The first theorist to offer more than a fleeting account of crime was Gabriel Tarde (1890) who argued that criminal behaviour is largely a function of the urge to imitate the actions of others. In the late 1930s, aspects of Tarde's work were extended and applied in more rigorous fashion to problems of crime and deviance.

Differential Association

Edwin Sutherland asked: If crime has traditionally been explained in terms of poverty, mental defects, biological inferiority, or conscious choice, how does one explain the perpetration of criminal (or at the very least, socially harmful) acts by members of the middle and upper classes? Sutherland said crime was very much like any other kind of behaviour – a *socially learned behaviour* acquired in the context of *intimate groups* (such as friends, work colleagues, family members) (Sutherland 1939; Sutherland & Cressey 1966). For criminal behaviour actually to occur, however, there must be "an *excess of definitions favourable to violation of law* over definitions unfavourable to violation of law" (Sutherland 1947, pp 6-7). Exposure to definitions favourable to crime varied, according to Sutherland, in *frequency*, *duration*, *priority* and *intensity*. Association with criminal networks does *not* mean that law-abiding citizens automatically "fall into crime". Instead, the key issue is the relative significance of the status to be derived from joining a criminal group (the intensity of contact), and the degree of commitment that persons in law-abiding roles have to their "own" social group (the priority of contact).

Neutralisation Theory

Gresham Sykes and David Matza (1957) explored the relationship between group norms and individual conduct and why persons *continued* to engage in criminal behaviour beyond initial or infrequent involvement. Sykes and Matza agreed that crime was largely a learned activity, but they criticised the lack of research into the *content* of what was learned. There is much work suggesting persons engaging in crime share many of the beliefs and values held by so-called non-criminal groups (Coles 2001). For Sykes and Matza such beliefs and values merge around the following four elements: 1) prominence of "feelings of guilt or shame [upon] detection or confinement" (suggesting that law breakers know that their behaviour is "wrong"); 2) "admiration and respect [for] law abiding persons" (for one's father, mother or as is often now the case, for a sporting identity or film star); 3) presence of strict rules regarding who it is appropriate to victimise (delinquents and criminals rarely steal or intentionally injure their friends or relatives); and 4) belief that social conformity is the ideal mode of conduct even for those families where crime is, so to speak, a "way of life" (a sense that it would be better or preferable to live law-abiding lives if circumstances permitted) (Sykes & Matza 1996, p 206).

The prominence of these four elements led Sykes and Matza to suggest that deviant or delinquent (or criminal) subcultures do *not* reject "dominant" values and beliefs. Instead there is tension between inclinations to adhere to mainstream values and also to involve oneself in the unlawful activities carried out by one's peers. They theorised that a critical precursor for continued involvement in delinquent and criminal activity is the existence of *techniques* for justifying or neutralising such behaviour. This could happen in several ways: see below, Table 5.1.

Table 5.1 *Techniques of Neutralisation*

Technique	Example
denial of responsibility	"I was drunk at the time"
denial of injury	"They can afford it"
denial of victim	"Smoking marijuana never hurt anyone"
condemnation of condemners	"Police are the real criminals"
appeal to higher loyalties	"I did it to protect my family"

These techniques shed light on why people can hold *conflicting levels of commitment* to both their own group or subculture, and, the demands of society at large. Recently, these rationales have been used to explain crimes committed by corporations and governments (Cohen 1993; Harper & Israel 2000).

Shortcomings

1. Neither differential association nor neutralisation theory question the relationship between criminal behaviour and the capacity to label certain acts as criminal. Reducing crime may in fact be linked to its definition rather than people's inability to learn the "right" kinds of behaviour (Morris & Hawkins 1970).
2. Neither perspective adequately addresses how people *first* became involved in criminal networks.
3. Social learning theory does not account for crimes which require little or no exposure to criminal networks (murder, aggravated assault, or rape).
4. Social learning theory is virtually silent regarding the impact of wider structural forces – such as political, legal, and economic factors – upon definitions of crime and the likelihood of any one person or group being in a position to learn and internalise the techniques and rationales for criminal behaviour.

ANOMIE AND STRAIN THEORY

Along with Tarde, Emile Durkheim (1933, 1952) was one of the first to write about crime in terms of its social aspects. In contrast to "primitive" societies where bonds between members were strong and social roles clearly defined, Durkheim believed "modern" society to be founded around a prolonged tension. This tension (or "strain" as it was later called) arose due to the need to promote individual talents within social structures ill-equipped to match such talents or desires with socially and economically useful roles. Where this tension was greatest, *anomic conditions* often predominate. Anomie was a term used by Durkheim to describe the profound sense of normlessness pervading society (or sections thereof) as each person struggles to give their life meaning or purpose. In such situations, Durkheim felt that crime would rise sharply since key structures (school, law, family, work) fail to channel individual desires into socially acceptable roles.

Building upon Durkheim's work, Robert Merton (1938) theorised that crime was caused principally by the way the (American) social structure encourages crime. Merton argued there were inconsistencies between the *goals* society sets for *every* individual (those of financial rewards and material success) and the unequal *distribution of the means* available to achieve such goals (good jobs, good schools, stable families, and so forth). Wherever the "institutional means" toward law-abiding behaviours were lacking Merton believed that some people may turn to crime. He said that persons who experienced such "strain" were likely to adopt one of five responses: see below, Table 5.2.

Table 5.2 *Typology of Modes of Individual Adaptation*

Modes of Adaptation	Cultural Goals	Institutionalised Means
1. Conformity	✓	✓
2. Innovation	✓	✗
3. Ritualism	✗	✓
4. Retreatism	✗	✗
5. Rebellion	▲	▲

Key: ✓ acceptance, ✗ rejection, ▲ rejection of prevailing values/substitution of new values

Source: Robert Merton 1938, p 263 adapted from Beirne & Messerschmidt 1995, p 419

Conformity denotes those who continue to aspire to society's goals even though they may not be happy with their current social standing or level of material wealth. Such people, according to Merton, make up the majority of society and do not commit crime. *Innovation* occurs where individuals desire financial and material success but lack the formal means for achieving such rewards. This group invent ways of keeping the dream of material success alive – crime being one such improvised technique for boosting one's social and economic status. Much property crime and small-scale drug dealing are good examples of innovative activity. *Ritualism* describes those who make a conscious effort to modify their view of success downward to match their own abilities. Occasionally, ritualists may commit crime but this will usually be the result of frustration with the social structure (for example, graffiti which speaks of the state of the economy or women's oppression). *Retreatism* describes persons who reject dominant values (following successive failures to live up to such values) and withdraw from social life. Merton remarked that retreatists are "*in* society but not *of* it" (vagrants, drunks, (some) drug addicts, psychotics, (some) suicides) (Davies 1986). *Rebellion* becomes an option for those who reject culturally prescribed goals and the traditional means of achieving them. But unlike retreatism, rebellion involves *new* goals and means – some of which may harbour a criminal dimension (for example, violent political action).

Strain theory has often been used to explain many kinds of property crime – especially those committed by the poorer members of society. It also predicts many kinds of juvenile offences.

Shortcomings

1. Strain theory assumes that society is based on consensus (regarding the appropriateness or justness of laws) rather than conflict (where even

the most basic of laws and norms are contested). Criminality may be the result of conflict induced by allegiance to *multiple* value systems rather than the outcome of being unable to ascend to the standards of a single dominant value system.

2. Strain theory does not go very far toward explaining crimes of the rich and/or powerful (deaths at work, excessive use of force by police, invasion of one country by another).
3. Strain theory has trouble accounting for crimes where the motivation would appear to be something *other* than material or financial gain (rape, paedophilia, consumption of illicit drugs).
4. Strain theory does not ask how strain impacts on females and what kinds of responses or "solutions" women engage.
5. Strain theory has tended to *over-predict* who will commit crime. For every one or two persons that experience strain and become innovators there are hundreds if not thousands of similarly situated individuals who do not (but see Runciman 1966; Lea & Young 1996 on the significance of "relative deprivation").
6. Strain theory takes the desirability and justness of the social structure for granted and for this reason it helps to maintain many of the conditions conducive to crime and other harms.

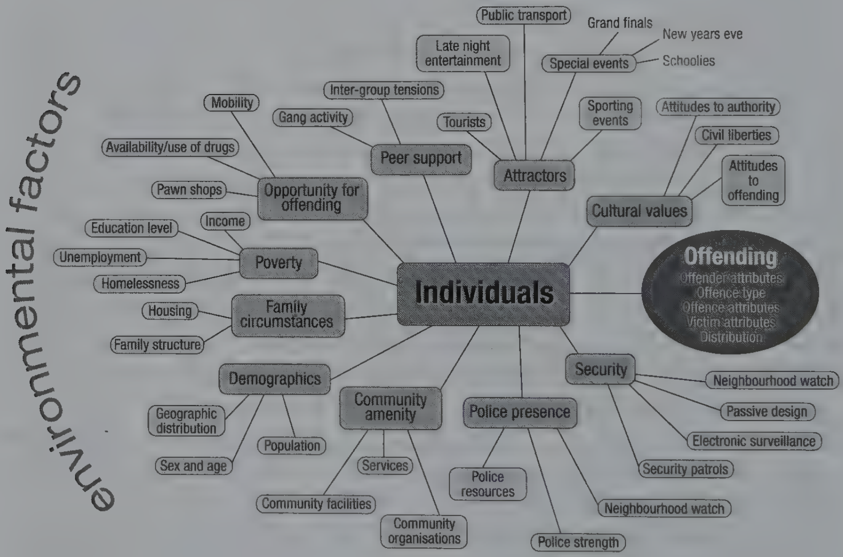

environmental factors
Public transport
Grand finals
New years eve
Schoolies
Late night entertainment
Special events
Inter-group tensions
Mobility
Gang activity
Tourists
Sporting events
Attitudes to authority
Civil liberties
Availability/use of drugs
Peer support
Attractors
Attitudes to offending
Pawn shops
Opportunity for offending
Cultural values
Education level
Income
Unemployment
Poverty
Offending
Offender attributes
Offence type
Offence attributes
Victim attributes
Distribution
Homelessness
Individuals
Housing
Family circumstances
Family structure
Demographics
Security
Neighbourhood watch
Community amenity
Police presence
Passive design
Geographic distribution
Electronic surveillance
Population
Sex and age
Services
Security patrols
Police resources
Community facilities
Neighbourhood watch
Community organisations
Police strength

Figure 5.1 *A spider diagram on offending developed by the Queensland Government in an attempt to present and quantify the various inputs that effect the workload of the criminal justice system.*

Source: Office of Economic and Statistical Research, Queensland Government www.oesr.qld.gov.au/data/models/spider/spid1/spid1_link.htm

LABELLING THEORY

The labelling perspective was the first criminological theory to suggest that crime has as much to do with the process and effects of law making as it does with law breaking. On this account, crime exists because the law defines certain actions as criminal. Most of us commit crime on a daily basis (petty workplace theft, littering, speeding) but usually manage to *avoid* being labelled "criminal". What counts as crime, therefore, has as much to do with the responses of particular law *enforcement* agencies as with any particular actions on our part. The important question for the criminologist becomes: Who has the power to influence the definition and policing of criminal behaviour at any one time? Responses to this question have typically made reference to those of high social and economic standing. The definition of crime is likely to be derived through *conflict* instead of, as previous theorists had thought, by way of consensus between like-minded groups.

The theorist credited with founding the labelling perspective is Howard Becker. In his book, *Outsiders*, first published in 1963, he made the following observation:

> "*Social groups create deviance by making the rules whose infraction constitutes deviance*, and by applying those rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that deviant label has successfully been applied; deviant behaviour is behaviour that people so label" (1963, p 9).

Becker here argues that crime is caused by the application of categories of criminal law to particular persons. Crime, in other words, is not the intrinsic property of an event or person but is instead something produced by the *social reactions* to criminal behaviour, and the *power to criminalise* certain events (smoking marijuana) instead of others (smoking cigarettes).

Following the work of Becker, Edwin Lemert (1967) distinguished two types of deviance. *Primary deviance* described the behaviour of those who had broken the law but then went on to resume law-abiding lives. These people, do *not* identify themselves for any extended period of time as criminal or deviant. However, Lemert believed many peoples' experience of police, courts and prisons led often to *more* not less offending. He called the crime resulting from contact with the criminal justice system *secondary deviance*. Those unable to discard the criminal label experience a substantial adjustment of their own sense of identity. This leads to the idea of *deviancy amplification* whereby the more stigma the criminal justice system foists upon an offender, the more likely they are to offend again. So, for labelling/social reaction theorists, the criminal justice system becomes part of the problem of crime rather than its solution.

Shortcomings

1. Labelling does not tell us why people commit crime in the first instance. That is, it does not account for primary deviance.
2. Labelling theory has been criticised for being *overly deterministic* in that it leaves little room for human agency – for a person actively to have sought or resisted the criminal label, or indeed, play their part in attracting the attention of the criminal justice system in the first place (Akers 1967).
3. The labelling perspective does not elaborate in any real depth on the questions of power and the structural conditions in which crime takes place. There is little attention paid to why law assumes the shape it does and why law targets specific groups and their behaviours rather than others.

Dialogue Box 5.1

Below are some edited "real life" examples of explanations for criminal behaviour related to Halsey by those who engage in graffiti-vandalism. Which perspective, if any, best fits each of these accounts? If *none*, what kinds of additional factors do explanations of crime need to address?

Case 1

Researcher: What causes graffiti?

Interviewee: In the beginning with this one friend … he was sort of looked at as a bad influence and I was told specifically [by] teachers, parents, whatever else, "Don't hang around with that guy, he'll sort of lead you in the wrong direction." …

Case 2

Researcher: What causes graffiti?

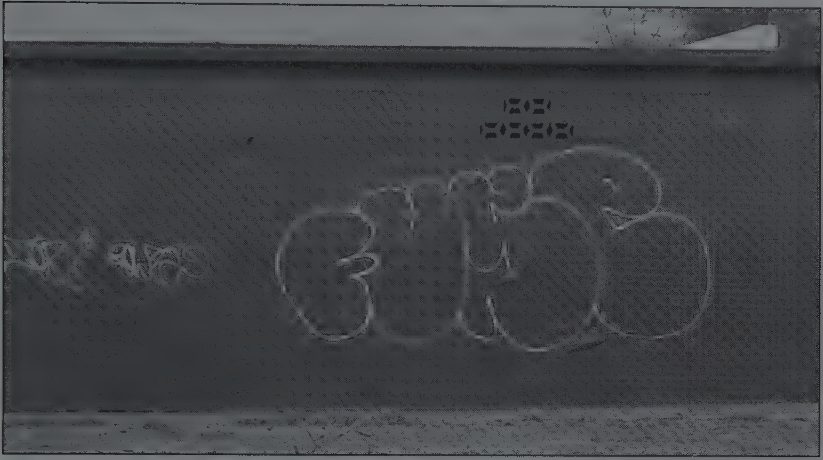
Interviewee: Everyone has their own beliefs. A cause may or may not be. I don't believe that graffiti is a cause. … I do pieces for the love of it.

Case 3

Researcher: Could you tell me some of those things you thought were pulling you down [and contributed to your offending behaviour]?

Interviewee: [W]e had a discussion in school one day where one teacher came in and was talking to another teacher and a few of our classmates were running amuck – so was I at the time, I think. [And the teachers were talking about our behaviour and saying],"Oh, it must have been their upbringing", you know, "Waste of time", and all this sort of shit. And you sit there and think, oh well, … same thing, "Fuck you". And from there on in that class it was sort of a rebellion thing. You don't want anything to do with [authority]. Because you've got that early teen mentality which is the

"Fuck you" mentality these days, um, yeah, I think it was a lot of comments from teachers [that] pulled [me] down. My parents were always supportive of me. No matter what I did, I can't fault them, really, in any way.



Is this art or crime or, perhaps, something other? How might each social explanation respond to this question?

RADICAL CRIMINOLOGY

Arising in the early 1970s, radical criminology has since evolved to encompass a number of different perspectives including Marxist, anarchist and abolitionist (Quinney 1974; Inciardi 1980; Christie 1993; Ferrell 1994). Radical criminology "frames the problem of crime in terms of class, race, gender, culture and history". It is argued "that crime is a sociologically situated phenomenon and that patterns of crime and punishment in a society reflect its social structural characteristics" (Lynch, Michalowski & Groves 2000, pp 1, 3-4). The society of most interest to radicals, and especially to Marxist criminologists, is capitalism – a mode of production (or way of producing goods and services) that has as its aim the maximisation of profit, the protection of the right to private property, and the concentration of wealth (and the means by which wealth is produced) into fewer and fewer hands (Greenberg 1993).

A major objective of Marxist criminology has been to analyse the relative power of groups to access and control the means of producing wealth. Such a perspective considers the best explanations of crime to be those which take into account the complex relationship between the economic sphere (or, what Marx and Engels termed the *base*) and the political, social, and legal aspects of society (collectively known as the *superstructure*) (Taylor, Walton & Young 1973). For Marxists, it is the base which heavily conditions the nature and extent of the superstructure. Two of the most important components of this superstructure are the laws which govern society and the operations of the criminal justice system. Marxist criminology examines how powerful groups (members of parliament, scientific experts, media magnates, heads of big corporations, owners of small business) are able to access and control the law-making process to their own advantage and, subsequently, to the detriment of less powerful groups (the working poor, the uneducated, the homeless, the young, the elderly) (Quinney 1977; Barak 1991; White & van der Velden 1995; Murray 1996).

One of the central claims of Marxist criminology is that those who hold and exercise economic power are usually in a position to do two things. First, they are able to influence the content and terminology of law so that particular types of harm are called something other than crime (Chambliss 1974; Reiman 1982; Halsey 1997). An example here would be deaths at work being framed as "accidents" rather than corporate manslaughter (Polk, Haines & Perrone 1995). Marxist criminologists might say that the nature of legal reform in this area reflects the need to keep the costs of "doing business" down since implementing safe work practices can, at least over the short term, be very expensive. Keeping costs low, means, in turn, greater scope for firms to employ more workers – something which governments and law makers look favourably upon given their attitude toward high unemployment and the effect of this on voters.

A second thing the economically powerful are able to do is present the *particular* interests of specific groups (namely, owners of capital) as being identical with the *general* interests of the population. An important aspect of Marxist criminology, therefore, is its conception of the role of the state and its relationship to crime (Barak 1993). Marxists believe the state (government, police, courts, prisons) *produces* rather than prevents crime (Colvin & Pauly 1983). By creating socio-economic conditions such that certain groups become marginalised and turn to crime out of need, the state contributes to such behaviour by stigmatising persons through the "successful" application of the criminal or delinquent label. However, Marxists go a step further than labelling theorists (and indeed each of the perspectives previously discussed) by shifting the object of analysis from crime to *harm*. The job of criminologists should be to explain the sources of social harm rather than crime alone. Criminologists should do this because many of the most serious types of social harm are, according to Marxists, *legal* not criminal (Schwendinger & Schwendinger 1970; Box 1983).

Shortcomings

1. The claim that capitalism itself is the major cause of crime, fails to explain why crime existed in non-capitalist societies like China or the Soviet Union.
2. Marxist criminology and radical criminology more generally tend to be quite vague about the kinds of harms/social injuries which *should* be deemed criminal.

3. The desire to broaden the definition of crime (to include social harms) *and* abolish the state (which formally defines crime) is, to some, a contradictory goal.
4. By viewing crime as a "proto-revolutionary" activity, Marxists have tended to ignore the many harmful effects of such behaviour (looting shops, monkey-wrenching) and that such harm is directed most often toward persons who occupy the same class position as the offender(s).
5. Marxist/radical criminology has tended to overlook the role of gender as an explanatory factor of criminal activity and of the nature of criminal law and its enforcement.

Damaged culvert pipes, Goolengook Forest Block, East Gippsland
Source: photograph by Mark Halsey

EXERCISE 5.1

With respect to the image above:

1. Discuss how the various social explanations for crime might be used to explain this type of vandalism?
2. How and why might the following information influence your choice of explanations? The pipes were allegedly damaged by persons protesting against the logging of old-growth forest and rainforest in Goolengook forest block, East Gippsland in 1999. Culvert pipes - such as those pictured - are placed below the surface of new logging roads to help with water drainage. Protesters believe

that damaging the pipes helps hold up the construction of such roads, which in turn delays the destruction of forests. During these delays – which in some ways can be viewed as a forced moratorium on logging – negotiations about future forest use can continue.

FEMINIST CRIMINOLOGY

Carol Smart (1976) put the relationship between sex, gender and crime squarely on the criminological map. Her work was a two-fold critique of, first, "malestream" criminology (the fact that most "formal" thought about crime emanated from the minds of *men*) and, secondly, of theoretical perspectives which fail to acknowledge that crime is an overwhelmingly masculine phenomenon. For Smart, as well as Chesney-Lind (1989), Stanko (1990), Naffine (1985), Carrington (1993) and Howe (1994), it was essential that criminology be able to explain 1) the relative *in*frequency of female offending, 2) the reasons for such offending when and wherever it occurs, 3) the differences in the way female criminality is policed and adjudicated as compared with responses to crime committed by males, and 4) the forces which prevented the relationship between gender and crime from becoming a "legitimate" or worthwhile object of criminological concern.

A key concept which cuts across feminist criminologies is a process known as *gender role socialisation*. Criminologists such as Simon (1975) and Messerschmidt (1986) contend that "femininity" (that is, what it means to look, feel, and act like the "ideal woman") has evolved mainly in relation to the domestic sphere whilst masculinity has most often been taken to flourish or "naturally" develop in the public domain. Francis Olsen (1990) suggests that there are a very specific set of dichotomies associated with membership in each sphere and sex:

Table 5.3 *Gender Stereotypes*

Male ("public sphere")	Female ("domestic sphere")
rational	irrational
active	passive
thought	feeling
reason	emotion
culture	nature
power	sensitivity
objective	subjective
abstract	contextualised

Olsen reminds us that there are two important processes associated with these dichotomies – those of *sexualisation* and *hierarchisation* (Olsen 1990). It is not simply that men are separated from women on the basis of their biology (sexualisation) but that traits taken to be masculine are viewed as *superior* to the feminine variety. It is "better" to be rational than irrational, active rather than passive, objective rather than subjective, and so forth. In such cases, biological differences between males and females are taken as the basis for ascribing social differences and ranking such differences in order of importance.

All this has substantial implications for how we come to think about men and women and their relationship(s) to crime. Specifically, there are two key points to note. First, since women have traditionally been viewed both as occupying the domestic sphere and as "innately" passive, sensitive, nurturing and the like, they have been viewed as largely *incapable* of committing crime. Tough, hardened and desperate men (burglars, armed robbers) or, alternatively, intelligent and meticulous men (corporate criminals, drug lords) commit crime. Crime, by this account, embodies the very opposite of the feminine (and women who do happen to be charged with various crimes are considered sick or irrational). A second point to make is that the view that women spend most of their time at home has seen women construed by policy makers/criminologists as incapable of becoming a *victim* of crime. Today, we know precisely the opposite to be so with the home posing as the most likely place where women will become a victim of any number of crimes ranging across assault, rape and murder to name just a few (Easteal 1994).

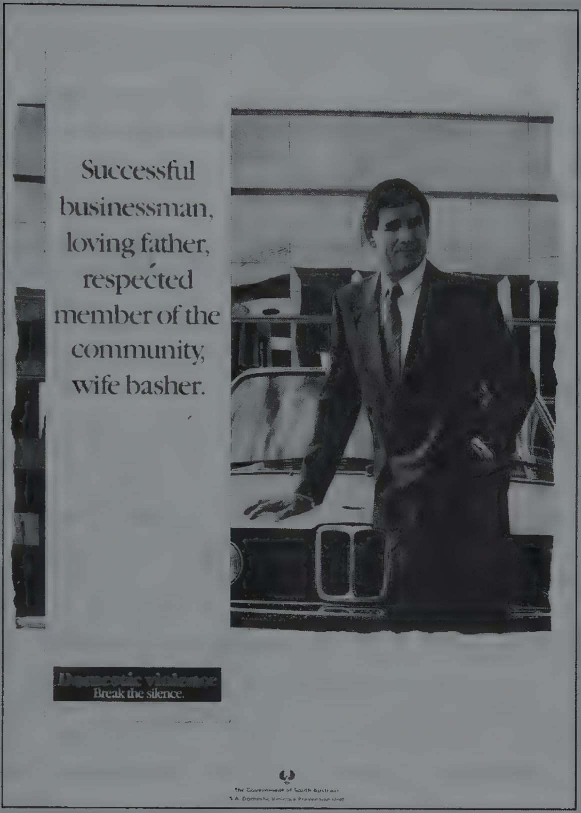
The gendered assumptions about what males and females are capable of doing and experiencing has dramatically impacted theories about criminal offending. These theories extend across a number of elements such as women's exposure to situations conducive to crime (opportunity theory), women's likelihood of learning the techniques of crime (differential association), women's attachment to significant others (social control theory), and women's position with respect to legitimate avenues for the realisation of financial security (strain theory). However, feminist criminology reaches beyond the simple application of traditional criminological frames to women's offending (or lack thereof). Indeed, some turn the question around and ask why *men* commit the majority of crime or, equally importantly, why many kinds of harm suffered by women are *not* defined as crime but as part of the "normal" order of things (Daly & Chesney-Lind 1988). Four distinct feminist criminological perspectives which deal with such questions have been identified (Einstadter & Henry 1995).

The *liberal* feminist perspective explains female criminality as an unfortunate cost of achieving equality between the sexes – increased equality in the public sphere (in government, at work, in education) leads to an increase in the opportunity for females to commit crime. However, crime is nonetheless viewed as a predominantly masculine activity since men are still more likely find themselves in situations conducive to crime. *Marxist* feminists argue that female criminality reflects the fact that capitalism creates *gendered* divisions of labour and conflict between classes. Female crime committed reflects such gender biases and class divisions (shoplifting, prostitution, spousal homicide) (Alder 1986). The great bulk of crime is committed by men and that men are themselves *victims* of an oppressive economic structure. For many such men, crime becomes a means of "doing masculinity" in a system which, on the one hand, encourages all men to be competitive, aggressive, self-reliant, as well as the main economic provider, but, on the other, fails to supply sufficient avenues for the realisation of these aspects.

A third perspective – *radical* feminism – considers female criminality as a rational response to patriarchal social relations. Examples of such criminality include workplace fraud or sabotage, spousal killings, filicide and infanticide. In the case of fraud, women lessen their reliance on men through (illegal) improvement of their economic standing. Women wrestle back control of sexual reproduction by killing their partners or children. Denying men their own lives and, in some cases, those of their children, is the most striking method of interrupting patriarchal arrangements. Male criminality, on the other hand, is a means of entrenching patriarchy. Crime becomes the ultimate form of dominating women through rape, domestic abuse, prostitution, or pornography. The fourth feminist criminological perspective is *socialist*. Here female criminality is the result of *both* gender- and class-based factors. Women's low offending is traced to limited opportunities for crime which flow from being rendered powerless by both economic and male-centred (androcentric) structures (Messerschmidt 1986). On the other hand, men's class position as well as their masculinity means that they have to contest and prove their "manhood" in illegitimate ways (gang conflict, pub brawls, motor vehicle theft/joy riding, graffiti, gay bashings/hate crimes, vandalism).

Shortcomings

1. Feminist criminology focuses on masculinity at the expense of *femininity* and how the production of the feminine sustains particular kinds of criminogenic conditions.
2. Feminist perspectives lack an understanding of the nature, operation, and limits of *power*. Power tends to be treated as something which is owned and exercised by men at the expense of women. This conception of power does not account for the way(s) many women (and men) have resisted various forms of domination (see Foucault 1977).
3. Most feminist criminological perspectives take crime as something that exists objectively rather than something constructed by and in various discourses, media representations, and relations of power and knowledge.


Successful businessman, loving father, respected member of the community, wife basher.
Domestic violence
Break the silence.
The Government of South Australia
S.A. Domestic Violence Prevention Unit

South Australian government poster from 1988 aimed at raising awareness of violence against women by men, irrespective of class

Source: South Australian Department of Human Services

POSTMODERN APPROACHES

"Postmodernism" indicates the series of social relations which have grown out of, and take their form in opposition to, the period in history known as modernity (usually taken as spanning the Enlightenment until around 1945). Postmodernity is characterised by several traits:

- rejection of a natural order or a universal "truth";
- promotion of alternative ways of knowing about and participating in the world (scepticism of the scientific method and Western conceptions of progress, morality, deviance, and so forth);
- preference for local and deinstitutionalised forms of control (distrust of overarching political structures);

- concern to demonstrate the fluid aspects of personal and collective identity (rejection of the concept "human nature") (see Smart 1993).

These aspects bear sharply on postmodern explanations of crime – explanations which first emerged in the late 1980s predominantly with the work of Stuart Henry (1987, 1989) and Dragan Milovanovic (1989). Since this time, postmodern criminology – not to be confused with post-structuralist analyses (Young 1996; Halsey 2001) – has had a substantial if controversial effect on traditional theories of criminal behaviour. A primary reason for this is that postmodernists reject any notion of an "ultimate" cause of crime (Morrison 1995, esp pp 451-508; Arrigo 1999).

In what is generally taken to be the first major criminological work to deal with postmodern issues, Henry and Milovanovic (1996, p 116) write: "Crime is the power to deny others their ability to make a difference. It is the ultimate form of reification in which those subject to the power of another agency suffer the pain of being denied their own humanity [...]". By such a definition, these authors – who work under the label "constitutive criminology" – agree with Marxist and feminist criminologists who, as seen above, argue that law is a very selective list of social and individual harms. However, a key point of departure for postmodern criminology lies in its approach to framing the causes of such harm and/or crime. There can be no general theory of criminal behaviour since crime is a heterogeneous event. This does not mean that crime cannot be "explained". Instead, what ultimately is produced is a *representation* of the offending behaviour.

A good way to illustrate this point is to take an example of a crime and examine how a postmodern criminologist might go about explaining its occurrence. For illustrative purposes we can use the crime of burglary. If we ask: What causes burglary?, a variety of answers will arise depending on the criminological perspective taken: see below, Table 5.4.

There are a number of points postmodern criminologists would probably make in relation to explaining burglary. First, there would be a concern to show that burglary is a technique for negotiating the individual's conception of "self" (who one is or wishes to become). Crime is tied to issues of *status* or the cultivation of prestige and excitement (Weber 1970; O'Malley & Mugford 1994). Here, for postmodern criminologists, burglary would be conceived as a way of (re)creating one's existence not just in monetary terms (as Marxists would argue) or in masculine terms (as many feminists would contend) but in *subjective* or visceral terms as well (Katz 1988; for a critique of Katz, see Polk 1994).

Secondly, postmodern criminologists would argue that the "causes" of burglary are as numerous and wide-ranging as those who engage in such conduct. They would point out that each person's biography is *unique* (although connected to others) and that whenever political or legal categories speak about "the typical offender" they pass up the opportunity to learn something about the nuances of human interaction, crime, and the way various ways society responds to crime. Moreover, postmodernists would argue that the sources of crime may in fact reside in situations or structures typically taken to prevent crime. Burglary is thus reconceptualised as an event wedded to situations which, by usual standards, seem *entirely separate* to the problem of crime (such as being employed, being a "good" student, being a member of a "stable" family, and so on).

Table 5.4 *Explanations for Burglary*

Perspective	Explanation
Social Learning	internalisation of conceptions of "right" and "wrong" held by criminal peers
Anomie/ Social Strain	collapse of line dividing the "sacred" (private property) from the "profane" (desire to invade dwelling); legitimate avenues for earning money curtailed (burglary as an example of "innovation")
Labelling	result of previous dealings with criminal justice system (of officially being branded a "criminal")
Radical	product of class conflict, rational reaction to alienating economic forces which necessarily lead to "crimes of accommodation"
Feminist	way of redeeming or displaying masculinity through risky behaviour that is economically rewarding (particularly for those unable to gain respect from intimates and/or who refuse to lawfully fulfil the role of "breadwinner")
Postmodern	interplay of a complex array of forces such as personal biography, the struggle to resist or retain a "mainstream" identity, exposure and commitment to particular styles of consumption signifying success and belonging

Thirdly, a postmodern perspective on burglary would attempt to bring to light bodies typically deemed "marginal" to debates about crime. Here, *the views of offenders* might be engaged as a means of broadening knowledge of aspects which play (or do not play) on the minds of those who commit such offences. This is in keeping with the idea that no group has or should have a monopoly on the "truth" attached to a particular event (burglary). For postmodern criminologists an important task is to create the conditions whereby bodies deemed irrelevant to doing "real" criminology can tell their stories (of crime, of victimisation, of injustice, and so forth). This, of course, would not result in *the* explanation for crime. However, it would increase knowledge of the diverse ways that individuals, groups, and governments relate to and, importantly, define and perpetuate particular types of harm.

Fourthly, and finally, postmodern criminologists would, like Marxists and feminists, point to the class and gender factors influencing those who commit burglary. But postmodernists would in addition be concerned to move away from a simple causal relationship between economics and crime or between masculinities and crime (Connell 1995; Collier 1998). Instead, there would be an attempt to explore the cultural processes which subtly induce us to desire a certain way of existing. The impact of the mass media, of corporate images, of sporting and movie icons, of political programs and other factors would all be examined as *texts* which speak to and construct a notion of the "ideal" world and of the kinds of "selves" which are permitted to inhabit such a world. Postmodern criminologists — drawing on post-structuralist methods would analyse the way in which these texts write certain persons or groups into and out of society and the costs of doing so. Burglary, under this scenario, becomes one of the inevitable outcomes of, first, speaking on behalf of particular groups (classes, ethnicities, genders, species) at the expense of others, and, secondly, of building society around particular kinds of knowledges or ways of being (professionals, the nuclear family, modern systems of law and government, reason, science, and so forth).

Shortcomings

1. Postmodern approaches to crime have been charged with leading to an extreme form of *relativism*. Critics such as Hunt (1991) and Schwartz (1991) argue that if, as postmodern theorists contend, there really is no such thing as "truth" and that all knowledge is relative and contestable, then there is absolutely no basis by which postmodern criminologists can proclaim "their" approach as superior to any other.
2. Postmodern accounts have also been criticised for providing little or no "practical" techniques for reducing crime (but see Henry & Milovanovic 1999).

CONCLUSION

Social explanations for crime have differed markedly over the last century or so. Some locate the causes in the relationships drawn between peers, whilst others focus on the structural components of the political and economic system within which crime occurs. Some look to the configurations of masculinity and femininity that condition one's actions, others to the role that "expert" knowledge plays in perpetuating rather than reducing crime. Perhaps the most important point to be made is that no perspective holds all the cards when it comes to isolating the causes of crime. The implications of this are twofold. First, it is important to avoid talking about explanations of a thing called "crime" (a decidedly general and nondescript term) and begin talking in terms of the factors or conditions that hold relevance for specific kinds of offences and the various laws and enforcement practices which govern their occurrence. Secondly, it would seem necessary to look to the strengths exhibited *across* theories rather than relying on the explanatory power of a single perspective. As the philosopher Friedrich Nietzsche once remarked, "All seeing is essentially perspective, and so is all knowing. The more emotions we allow to speak in a given matter, the more different eyes we can put on in order to view a given spectacle, the more complete will be our conception of it, the greater our 'objectivity'" (1956, p 255). The challenge, therefore, would seem to be to keep an open mind.

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QUESTIONS

1. Besides those given in the text, list examples of crimes that occur under each of the five main responses to strain.
2. From your local newspaper, find an example of an "actual" crime which can be explained by a) differential association, and b) neutralisation theory.
3. What are the main factors distinguishing labelling theory from those which preceded it?
4. How might each perspective explain: a) murder, b) motor vehicle theft, c) corporate fraud, and d) littering?
5. Which perspective do you think offers the best explanation for crime? On what basis did you arrive at your decision?

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USEFUL WEBSITES

www.paulsjusticepage.com

Contains information about such issues as corporate crime, hate crime and drugs.

www.critcrim.org

Website of the American Society of Criminology. Also contains links to the work of key critical criminological issues and theorists.

www.crimetheory.com

Contains information about theories of criminal behaviour and specific links to key sociological texts about crime causation.

CHAPTER 6

INEQUALITIES OF CRIME

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KEY WORDS

- class
- disadvantage
- identity
- inequality
- intersectionality
- poverty
- relative deprivation
- sex/gender

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INTRODUCTION

The relationship between crime and inequality is central to criminology. Each chapter in this text acknowledges that power and powerlessness, advantage and disadvantage, social structures and hierarchies play significant roles in shaping criminal law, society and individual behaviour. This chapter explores these themes by canvassing seven major propositions on the relationship between crime and inequality, moving from the societal level to the individual criminal act. We then turn to the image that criminologists have of inequality and the ways they explain the disproportionate presence of disadvantaged people in the criminal justice system. This image, which we term the *familiar analysis of inequality*, focuses on class, and to a lesser extent, on race/ethnicity and age. However, the familiar analysis has a major flaw: it ignores sex/gender. When sex/gender is drawn into the analysis, two observations can be made. The first is that it is *males* who are most likely to offend or to be subject to criminalisation. The second is that men's *private* violence, that is, violence against women and children they know, is not addressed. The familiar analysis is also flawed because it collapses race and class, using racial classification as a substitute for class. Finally, the familiar analysis utilises elements of inequality in a categorical fashion and thus fails to acknowledge the intersectionality of class, race/ethnicity, gender and age. We explore the ways in which crime is predictably structured by multiple forms of inequality, even as we know that it is enacted and experienced within complex and contingent configurations of power.

INEQUALITIES OF CRIME: GENERAL PROPOSITIONS

The study of crime and inequality has a long history. Early empirical studies carried out by Guerry and Quetelet in the 1820s, addressed the spatial distribution of property and violent crime in poor and more affluent areas of France (see above, Chapter 2; Vold, Bernard & Snipes 2002). Similar ecological studies have been conducted in Australia, where in New South Wales, for example, strong correlations are found between crime and features of poverty in residential locations (Devery 1991). A voluminous literature exists today, which addresses the quantitative and qualitative aspects of crime and inequality. Quantitative approaches examine distributions of income and racial inequalities, employment rates, access to amenities, and more generally, economic conditions and crime (Hagan & Petersen 1995; Lynch & Ogilvie 1999). Qualitative approaches examine communities, neighbourhoods, workplaces and criminal gangs. These studies show how people make a living in the informal and formal economies, on the boundaries of legality and illegality, and in societies ordered by inequalities of class, race/ethnicity, gender and age (Sullivan 1989; Austin 1992; Maher 1997). Only by drawing from both quantitative and qualitative approaches do we gain a well-rounded picture of the relationship between crime and inequality. From this vast literature, some general propositions can be made.

Seven General Propositions on Inequality and Crime

Economic inequality, not poverty, is a major cause of crime

A measure of *poverty* is an absolute measure of material circumstances; for example, using the Henderson Poverty Line measure, 19% of the Australian population is below the poverty line (ABS 2000a, p 2). A measure of *economic inequality* is the gap between the material circumstances of the least and most well off members of society. For example, while Australia may have a low level of poverty, it has a high degree of economic inequality. Research across and within countries shows that economic inequality, not poverty, more often predicts levels of violent crime. For example, there is a consistent relationship between economic inequality and homicide: countries with higher levels of inequality have higher homicide rates, and US States with higher levels of economic inequality have higher levels of firearm violence (robbery and assault), even when controlling for the effects of poverty and access to firearms (Vold et al 2002, p 97). The concept of relative deprivation is also used to describe this phenomenon. For example, during times of economic depression (when *all* economic indicators are depressed) crime rates can remain low, but during times of economic recession (when only *some* economic indicators are depressed) crime rates can rise (Wilson & Lincoln 1992; Mukherjee 2000).

Conditions of economic inequality foster higher crime rates across all segments of a society, among both rich and poor

What this means is that inequality has a more general effect across the population, not just on disadvantaged groups. This insight was made by Willem Bonger (1916) and has been developed further by contemporary criminologists. For example, inequality simultaneously causes "crimes of *poverty*, motivated by *need*" and "crimes of *wealth*, motivated by *greed*" (Braithwaite 1991, p 42, italics in original; see also Braithwaite 1979). Inequality is not just about stratified measures within an economy: it reflects how economic life is organised, including the historical, social, political and cultural contexts that shape inequality. For example, changes to the "free market economy" in the past 25 years have meant increased inequality, withdrawal of public services, increased stress on family life, and encouragement of the desire for even greater material affluence (Taylor 1997, pp 297-300; Taylor 1999). These developments have been coupled with a deregulation of financial markets and industries, which, in turn, has led to major corporate crimes in the insurance industry, stock markets and telecommunications. Contemporary examples of Australian corporate greed, competitiveness and mismanagement are the collapse of major corporations such as Ansett Airlines or HIH Insurance.

Inequality structures criminal law in proscribing some harms but ignoring others

This proposition deals with law *making* rather than law *breaking*. It recognises that the law ostensibly treats everyone equally for "in its majestic equality, [it] forbids the rich [and] the poor to sleep under bridges, to beg in streets, and to steal bread" (France 1894/1980). Yet, as we know, those with wealth have less need to beg or steal. Many crimes committed by powerful people and organisations are more often subject to administrative or special regulatory laws rather than punished under the criminal law (see below, Chapter 8). There tends to be greater public, media and political focus on individual crimes against person and property than on the more systemic "bloodless" crimes of the powerful (see Chapters 3 and 7). So while it is true that "lower class people commit those direct interpersonal types of crime, which are normally handled by the police at a higher rate than middle class people", it is middle class people who are more likely to commit those "interpersonal forms of crime, which involve the abuse of power … in occupational roles" (Braithwaite 1981, p 49). Thus, the kinds of behaviour that are subject to criminalisation have a class bias: lower class interpersonal abuses of power beget a criminal justice system response, whereas middle class abuses of power are more often handled by "softer" regulatory agencies.

Inequality structures the organisation of, and opportunities for, crime commission

This proposition highlights the fact that the forces that govern our choices in life also govern the kinds of crimes we can commit. Australian research on *medifraud* (that is, varied methods of cheating the public health insurance scheme) shows that patients may take advantage of the system, but physicians have a far greater range of opportunities to do so. Particular medical practitioners, like psychiatrists, operate within a structure that permits even greater opportunities for fraud (Wilson, Lincoln & Chappell 1991). Similarly, Daly's (1989) study of white-collar crime that was prosecuted in courts found that women were 1% of those convicted of anti-trust violations and securities fraud, but they were half those convicted for bank embezzlement. Importantly, 90% of the female bank embezzlers were clerical workers, whereas half of the male bank embezzlers were managerial or administrative workers. Another example comes from Australian criminologist Lisa Maher's (1997) study of street-level drug economies in New York. Her research shows that relations of gender, race, and class structured the opportunities for working in the drug market. For example, the women were largely excluded from men's drug distribution and selling, and a particular ethnic male group controlled drug sales. The main source of income generation for the women was sex work, and European American women fared better than African Americans or Latinas in their sex work earnings. Therefore, the structure of criminal opportunities, like that in the world of legitimate paid work, is stratified by gender, class and race (see Maher & Daly 1996; Steffensmeier 1983).

Inequality structures our appraisals of crime seriousness and how criminal justice officials respond to lawbreaking

This proposition refers to how we assess behaviour and crime seriousness based on the rank or status of those involved. For example, it is likely that a deviant act will be judged more serious when the offender is of lower rank than the victim, a pattern termed *upward* deviance. Drawing from US data, Black (1976, pp 21-22) finds that "the police handle more crimes committed by blacks against whites than the reverse, by juveniles against adults than the reverse, and by poorer people against wealthier people than the reverse". If a crime occurs between individuals of the same rank, or if a victim is of a lower rank than the perpetrator, then we may judge it less serious. Of significance is the fact that these appraisals of the seriousness of crime can affect the level of punishment an offender may receive and thereby create inequalities of sanction. To illustrate the impact of race/ethnicity in Australia, we find that there is enhanced concern (by whites) about Indigenous offending in rural towns, where there is the juxtaposition of a large black community living near a large white community (Cunneen & Robb 1987); and overall, sentencing may be more lenient when both victims and perpetrators of homicide are Indigenous (Cunneen 2001; Wilson 1987).

A criminal act itself creates an inequality

Here it is acknowledged that a crime event generates an inequality between a victim and offender. An offender says: "I am up here, and you are down there, so I can use you for my purposes" (Hampton 1998, pp 38-39). An offender has wronged or demeaned another, and thereby reduced her or his sense of security, trust in others, self-worth or dignity. For victims of crime, this theft or destruction of the self may be more salient than the theft or destruction of their material possessions, or in some cases, physical hurts to the body. Of course, with large variation in crime types and how they are experienced by victims, the degree of this consequential crime inequality will also vary.

Inequalities of crime are deeply embedded in the social order

This last proposition demonstrates how difficult it can be to capture inequality in crime and justice practices, even though we know it exists.

While we can identify exemplary instances of classist, racist or sexist prejudice by individual police officers, court officials or corrections staff, we would rather emphasise that inequality is reproduced effortlessly and seamlessly in the routine practices and judgments of all of us, not just criminal justice officials. Consider, for example, the *National Report* by the Royal Commission into Aboriginal Deaths in Custody (1991). Not one police or prison official was charged with wrongdoing as a result of this major inquiry; instead, the final set of 339 recommendations proposed changes not only to criminal justice practices, but also to broader social policies. Thus, it was acknowledged that the circumstances confronting Indigenous and non-Indigenous people in custody were a reflection of the inequalities evident in broader social structures and hierarchies (Lincoln & Wilson 2000).

INEQUALITY AND CRIME: THE FAMILIAR ANALYSIS

The familiar analysis of inequality draws on these seven propositions to explain disadvantage and crime. It says that powerful people and organisations can commit serious offences that are not detected or not treated as crime. If the offences are detected and the individuals apprehended, such powerful people or organisations are able to marshal resources to avoid a criminal conviction or penal confinement. On the other hand, the behaviours of a society's more marginalised members – those with fewer economic resources or members of racial-ethnic minority groups – are, relative to their numbers in the general population, more likely to be caught up in the justice system and disproportionately present in arrest, court and prison populations.

The familiar analysis of inequality and crime highlights the impact of class relations, race/ethnic relations, and colonialism on criminal law, crime and justice system responses. This kind of analysis structures all of the major sociological theories of crime, including Shaw and McKay's ecological theory, Merton's strain theory, Cloward and Ohlin's opportunity theory, Becker's labelling theory, and several radical theories (see above, Chapter 5). It features in general analyses of crime and disadvantage in Australian society (Vinson & Homel 1975) and in emergent theories of colonialism and crime for Indigenous Australians.

Critique of the Familiar Analysis

The familiar analysis is missing a key social relation – sex/gender – that challenges it in two ways. First, when sex/gender is included, we notice that the heavily criminalised population is composed of young, marginalised and racialised *men* – not simply disadvantaged *persons* (see "Feminist criminology" above in Chapter 5). Examining data from the

2000 prison census, we find that men were 94% and Indigenous people were 19% of the prison population (ABS 2000b). From these data, we calculated the gender and racial disproportionality ratios for imprisonment. Overall, men are 14.7 times more likely to be imprisoned than women; and Indigenous people, 14.1 times more likely to be imprisoned than non-Indigenous people. The gender disproportionality for Indigenous men and women is 13.2, and is higher for non-Indigenous men and women (15.5). These rates, coupled with other data on prison populations, confirm the familiar story of inequality in two ways. First, racial disproportionalities are high (Indigenous rates of imprisonment are 14 times greater than non-Indigenous, and even higher among women than men). Second, the profiles of men and women show high levels of disadvantage compared with the general population (Queensland Department of Corrective Services 2000). At the same time, imprisonment rates challenge the familiar story of inequality in that the male disproportionality (14.7) is as great as the Indigenous disproportionality (14.1 times).

Data on arrests and imprisonment suggest that social and economic inequalities have different effects on men and women. If the effects were the same, we would expect to see comparable proportions of men and women caught up in the criminal justice system. But we do not, especially for the more serious forms of street crime and violence. A study of juvenile crime in Queensland found that while there was a general correspondence between the types of offences committed by young women and men, females offended at one-fifth the level of their male counterparts (Ogilvie, Lynch & Bell 2000). Data from the United States for 1975 through 1994 show that women were 5 to 15% of arrests for offences of homicide, robbery and burglary. Their share of assault arrests, both simple and more serious, was 17 to 20%. For property offences such as theft, fraud, forgery and embezzlement, their share was 33 and 40% (see Daly & Tonry 1997, p 211).

Women seem to be more law-abiding and conventional than men, less drawn to crime (especially violent crime) as an activity, whereas boys and men are encouraged – largely by each other and culturally defined notions of "being a man" – to commit crime and harm others. Few criminological theories have grappled with this core conundrum. Feminist theorists have yet to explain why, if men have more power than women, men are at greater risk to be under criminal justice control. Non-feminist theorists have yet to explain why, if disadvantaged members of society are most likely to be under criminal justice control, far more disadvantaged men than disadvantaged women are affected.

Gender poses a second challenge in that the familiar analysis of inequality focuses only on how disadvantage affects men's *public* crimes. All the major sociological theories of crime focus on public crimes, and typically on crimes involving income generation. Until the advent of feminist work, criminology had been silent on men's physical and sexual abuse of women and children they know. Despite over two decades of feminist research on gender and what we may term *private* violence, the phenomenon remains ignored in mainstream criminological theories and texts. For example, a major US undergraduate text, such as Vold et al (2002), contains no discussion of men's violence against women nor of how it could be integrated into theories of public crime and violence. Criminological theory and research today is bifurcated. One strand focuses on a variety of public crimes, using the familiar analysis of inequality presented above, without any reference to gender. A second group examines the "masculinities" of crime, gendered sites of victimisation, gender relations in the organisation of crime, and private violence (Daly 1998).

ENGENDERING CRIME

Men, Masculinities and Crime

A review of research on gangs and delinquency (Heidensohn 1985, pp 128-134) finds that criminologists have long venerated young males as heroes. For example, Albert Cohen (1955) characterised the "delinquent as [a] rogue male", whose behaviour could be viewed both negatively and positively, as "traditionally symbolic of untrammelled masculinity" (as cited in Heidensohn 1985, p 132). Cohen and other researchers saw the masculinity in crime, but they had no theory of gender with which to analyse or explain it. Furthermore, as male researchers, they were drawn unapologetically to the study of young men rather than young women. For example, William Whyte (1955, p 299) points out that he could not study young women in Cornerville because they did not hang out on street corners. He admits he was more interested in "politics, rackets and gangs" than family life (p 324).

Since the mid 1980s, this situation has been changing, as criminologists are applying feminist theories of gender and sexuality to men and masculinities (Connell 1995; Collier 1998). There are now several theorists, including Messerschmidt, Jefferson, Polk and White who have addressed masculinities and crime (for reviews, see Daly 1997; Ogilvie & Lynch 2002). Some conceptualise men's criminal involvement as "doing masculinity", where the commission of a crime is an affirmation of masculine identity, when other pathways are thwarted. For example, Cunneen and White (1995) suggest that car theft – a crime overwhelming committed by men – is linked to the place of motor vehicles in men's lives, "as symbolic objects of masculine power, linked to fantasies of material and sexual domination and success, [and] as powerful cultural symbols which define what it is to be 'a man'"(cited in Ogilvie & Lynch 2002, p 201). Seeing crime as partly a consequence of "doing masculinity" alerts us to the social processes involved in committing crime. It is a constructed act, a thinkable line of action for some more than others.

The "doing masculinity" approach can been criticised for being tautological: hegemonic masculinity (that is, equating masculinity with "dominance, status, and independence", Ogilvie & Lynch 2002, p 199) is used to explain both the *causes of crime* and that *which results from (or is accomplished by) crime* (Collier 1998, p 21). In other words, men commit crime because masculinity is accomplished through crime commission. This is, of course, circular reasoning. In addition, we know that most men do not commit crime; hence, the production of masculinity and masculine identities comes from many sites, not just crime. The "man question" for criminology (Allen 1989) remains one of the hardest to theorise, and the reason is that, with some exceptions, the non-gendered offender has featured in criminological thought for the past two centuries.

Women, Femininities and Crime

An important theme to emerge from research on women and crime is of the *blurred boundaries between victimisation and criminalisation*. Many female offenders, especially those in prison, have histories of physical and sexual abuse. (This sequence of being abused as a child or adolescent and later offending is increasingly being applied to men.) Young women and men who are living rough in the street are especially vulnerable to victimisation (Alder 1991). The blurred boundaries theme helps us to see that *offenders* and *victims* are not separate, but overlapping populations. At the same time, the blurred boundaries theme can be limited because it ignores questions of agency and responsibility in women's (and men's) lawbreaking (Daly 1992, pp 47-49). For example, Miller (2000) challenges previous research for depicting gang girls as victims of male gang members' sexism and for using victimisation as the primary explanation for girls' involvement in crime. Likewise, Ogilvie (1996) suggests we analyse women's lawbreaking through a lens of agency, responsibility and pleasure.

PUBLIC AND PRIVATE VIOLENCE: GENDER, RACE, AND VICTIMISATION

The sites and contexts of victimisation for men and women vary. Based on Australian national victim surveys, men are three to four times more likely to be victims of *public violence* – robberies and assaults that take place on the streets or in and around pubs – than are women. By comparison, women are three times more likely to be victims of *private violence* – assaults by family members. (We use terms *public* and *private violence* to call attention to gender differences in sites of violence and victim-offender relations; but the public/private dichotomy in law is misleading and works to the detriment of women; see Graycar & Morgan 2002.) Both men and women are more likely to be assaulted by men, not women. Patterns of homicide are similar to those for assault, with most female victims killed by their partners in private residences, compared to male victims, who are killed by friends or acquaintances (see below, Chapters 7 and 9).

Felson's (1994, p 39; see Chapters 2 and 17) analysis of victimisation data from the United States claims that "time spent in family and household settings is less risky than time spent away from these settings". His claim may be true for some young men, or if we exclude domestic and family violence; but that would be excluding a good deal of offending. Analyses like Felson's, which ignore the *gendering of routine activities*, overlook the contexts and justifications for men's forms of aggression toward men (public violence) and men's forms of domination over women in familial or dating relations (private violence). Analyses that focus only on the *situational* or *place-based* features of crime and ignore gender identities and inequalities, shed no light on why some victims are more vulnerable than others and why some offenders are more "motivated" than others.

The terms *public* and *private violence*, as we have used them so far, are more relevant to non-Indigenous than Indigenous Australians. Lucashenko (1997) demonstrates that violence in Indigenous communities has two aspects: public violence (that by the *Australian state*) and private violence (that by *men*). Public violence is evident in the overrepresentation of Indigenous men and women in prison, poor health, bashings and rapes by the police, and violent dispossession, that is "removals of children, racism, oppression and fear" (p 155). She argues that "public violence has been easy for Black spokespeople and academics to see: the State is an easy, although legitimate target for accusations of racist violence" (pp 155-156). However, she says that we must also attend to private violence: "the individual men doing the bashing and raping and child molesting that is wreaking havoc in Aboriginal nations across the nation" (p 156). This shift in focus puts Indigenous women in a difficult position because they are "torn between the self-evident oppression they share with Indigenous men … and the unacceptability of those men's violent, sexist behaviours toward their families" (p 156). An intersectional analysis is required, which examines the multiple relationships of inequality, among and between Indigenous and non-Indigenous men and women. Neither a "gender-only" nor "race-only" analysis makes sense.

RACE AND CLASS

In addition to ignoring sex/gender, a major deficit of the familiar analysis of inequality and crime is that it tends to equate race with class. When race/ethnicity is mentioned, a researcher will say the racial-ethnic minority group members experience even greater disadvantage than those of the majority group. This depiction is correct when we compare measures of health, housing, education, income or employment for

Indigenous Australians as a group with the total Australian population (Council for Aboriginal Reconciliation 1994). The unemployment rate is conservatively estimated at five times that of non-Indigenous Australians; Indigenous Australians suffer more health problems and die at an earlier age, have higher illiteracy levels and have completed fewer years of formal education. However, such comparisons mask the fact that there are enormous differences within and between Indigenous communities. There are regional differences and ones based on access to amenities, coupled with the undeniable presence of middle-class Indigenous Australians (Taylor & Gaminiratne 1993; Tyler 1998). Inequality cannot be exclusively restricted to class-based elements, where racial classification is used as a surrogate measure of class.

Studies in North America and Australia have analysed the class-race nexus. When severely disadvantaged groups are matched, then the "race-effect" tends to disappear, that is, most of the processes and structural features used to explain involvement in common crime relate to disadvantage rather than race/ethnicity (see Krivo & Peterson 1996; LaPrairie 1992). Other studies find that while class differences play a significant role in predicting involvement in common crime, there is residual variance that cannot be explained by class alone. For example, Gale and colleagues (1990) compared offending profiles and class backgrounds of Indigenous and non-Indigenous youth in South Australia. Class accounted for a great deal of the differences, but there remained race differences in youthful offending. Utilising Tasmanian data, Cove (1992) analysed the age and class dimensions of the racial disproportionality for imprisoned males. When controlling for class (measured by employment or not in the labour force), the Indigenous disproportionality dropped from 10 to 5 times. Using a more sophisticated measure of class (occupational categories like clerical or sales) reduced the disproportionality from 5 to about 2.5 times. The incorporation of educational qualifications likewise reduced it from 10 to 7 times.

In Australia, the nexus of race and class is intimately tied to the history of British invasion and colonisation of Indigenous peoples. Over the last two centuries, colonial, social welfare and criminal justice policies moved from "open warfare" to "protective legislation" to "criminalisation" (Cunneen 1997, p 107). These developments undermined Indigenous modes of social control in the past, and they continue to affect Indigenous communities today. Secondly, where data exist, we find that Indigenous people are most often dealt with by arrest rather than summons, and this reproduces greater disadvantage at each subsequent phase of the justice system (Gale et al 1990). The pattern of arrest and re-offending, especially for assaults, break and enter, and public order offences, means that Indigenous Australians (predominantly young males) have longer police records, and these, in turn, are highly predictive of detention (Cunneen 1997, p 116). So, in addition to class disadvantage, there are specific explanations of disadvantage for Indigenous Australians – one being the effects of colonisation, and the other being the effects of discrimination at their first point of contact with the justice system.

An emergent view by some, including Aboriginal elders, is that being in detention is a "rite of passage" for Indigenous youth. From interviews with young Indigenous males in detention centres in the Northern Territory, several themes emerged: (1) crime offered fun and excitement; (2) there was no shame or stigma to having a criminal record; and (3) incarceration offered benefits such as sporting facilities, audio-visual entertainment and schooling, which were more interesting than what was available in the young men's home communities (Ogilvie & Van Zyl 2001). These findings are chilling: they suggest that detention centres and deprivation of liberty are preferable to some Indigenous young men whose resource-depleted communities have little to offer. Race/ethnicity alone is insufficient to understand these findings: the multiple effects of colonialism, class, and gender must be considered.

INTERSECTIONALITY: INEQUALITIES AND IDENTITIES TOGETHER

We have explored how criminalisation and victimisation can be linked to several kinds of social relations, with each one possessing a distinctive logic and set of terms:

- Class is associated with economic differences, location in the occupational structure, and cultural capital;
- sex/gender is associated with biological and cultural differences, reproduction and care of the young, and men's presumptive superiority over women; and
- race/ethnicity is associated with cultural and linguistic differences and white people's presumptive superiority over black people; and depending on the country, it is associated with the impact of colonialism, immigration, slavery and civil war on subordinate populations.

We can imagine many more distinctive relations such as nationality, sexuality and age. The point, however, is that we need to recognise the distinctive character of each social relation *and* that each operates in relationship to the others.

The concept of *intersectionality* highlights the contingent and fluid expression of class, race, gender and other social relations (Daly 1997; Ogilvie & Lynch 2002); and it helps to explain how individuals and groups experience multiple inequalities. These inequalities are intermeshed rather than operating in any isolated, categorical or additive way. For example, in Maher's (1997) study of the street drug scene, sex/gender interacts with race/ethnicity, and both in turn interact with economic disadvantage to produce different outcomes and opportunities for different groups. Her study demonstrates that "the intersectionality of race/gender not only distinguishes participants but also where they work, how often they work, and how much they earn" (pp 202-203). Such a confluence is also seen in the differing conceptualisations of private versus public violence for Indigenous and non-Indigenous women.

Intersectionality does not mean that crime and victimisation can be reduced to the individual level. We cannot explain away inequalities of crime by saying "it depends on the individuals and their particular set of circumstances". The structural elements cannot be ignored for these are reproduced in the disadvantage experienced by individuals and groups.

CONCLUSION

Inequality is central to understanding and explaining crime. Our seven major propositions indicate that inequality is:

- comparative or relative rather than absolute,
- a factor that fosters higher crime rates across all segments of society,
- reproduced in how the criminal law is framed,
- reproduced in the structure of criminal opportunities,
- reproduced in how the criminal justice system responds to crime,
- evinced in the criminal act itself, and
- embedded in the social order.

The familiar analysis of inequality and crime has these major flaws:

- it omits sex/gender and thus fails to account for the differential effects that disadvantage has on men and women,
- it omits sex/gender and thus fails to address the distinction between public and private forms of violence,
- it uses race/ethnicity almost exclusively as a substitute for class disadvantage and thus fails to address social and cultural dimensions, and
- it utilises the elements of inequality in a categorical fashion and thus fails to recognise the intersectionality of multiple disadvantages.

We touched on other key points in the study of crime and inequality. One is that there are blurred boundaries between criminalisation and victimisation. While victims and offenders are often placed in opposing categories, this gives us a misleading portrait of crime. A second is that the inequality literature tends to rely on quantitative studies of large-scale economic and demographic variables. While such work is important, it is essential that criminologists describe the multiple and contingent ways in which inequalities and crime operate in the "real world" of the streets, the home, the workplace, schools and religious places, cyberspace and in prison – anywhere you look.

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QUESTIONS

1. Explain how intersectionality might be applied to other disadvantaged groups in Australian society (based on sexuality or mental illness, for example).
2. What does the famous American trial of O J Simpson reveal about inequalities in the criminal justice system?
3. Why is the distinction between public and private violence important in understanding how the criminal law operates?
4. Is the profile (in both type and amount) of female crime likely to equal that of men in the future. Why or why not?

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USEFUL WEBSITES

A google or dogpile search brings up scores of sites on inequality, disadvantage and crime. Many contain lecture or course material from universities in Australia, the US, UK, Canada and other countries, or links to publishers and journals with books or articles in the area. The following websites are of particular relevance:

www.austlii.edu.au

www.canada.justice.gc.ca

www.crimetheory.com

www.critcrim.org

www.lawlink.nsw.gov.au (including Bureau of Crime Statistics and Research site)

www.popcenter.umd.edu

www.tryoung.com

www.utas.edu.au/library/info/subj/cjsguide.html

www.victimology.nl/esc.html

www.worldbank.org/poverty/inequal/abstracts/violence.htm

CHAPTER 7

CRIME IN THE STREETS

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KEY WORDS

- street crime
- fear of crime
- public order
- robbery
- assault
- drug/crime link

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Introduction

The way people think about crime, and in particular, the things that people fear about crime, are powerfully influenced by the imagery and meanings associated with crime on the streets. Crime takes place in every conceivable location, but it is street crime that resonates with our concerns about when and how we may become victims of crime. Street crime is no more serious than crime in other places, but it is commonplace and visible.

The common forms of street crime — robbery, street violence, and theft — have been around ever since there were streets. However, their specific characteristics have changed over time and the way the criminal justice system responds to street crime is subject to dramatic shifts. Street crime is the *public face* of crime. It provides a window onto the way our society functions, generates images of deviance that help us define ourselves, and serves as a receptacle for many of our fears about modern life.

This chapter will examine how people feel about street crime and how these feelings emerge out of more general concerns about social control, class, and racial differences. In this sense, the concept of *street crime* goes beyond the literal description of crime that occurs in public places and becomes a metaphor for crime as the consequence of social disorder. The policing of public space will be examined, including how changes in the regulation of public space have given rise to changes in the patterns of street crime. Data are presented on the extent and characteristics of three forms of street crime (robbery, violence, and illicit drug crimes), the nature of the offenders and victims involved, and the way that criminal justice agencies have responded to them. A key point is that people's perceptions and beliefs about street crime differ greatly from what is known from police and victim survey data on the characteristics and patterns of street crime. Consequently, if it is to be effective, street crime prevention must address the fact that street crime arises out of the interactions of people using public space.

CRIME IN THE STREETS AND PUBLIC PLACES

Virtually all forms of crime have their *public* and *private* faces. Some forms of crime take place mainly in private places, principally residences. According to national police crime statistics, about two-thirds of burglaries and sexual assaults, and over 60% of murders occur in residential locations (see below, Table 7.1). Other forms of crime are much more likely to take place on a street or footpath. Approximately 40% of robberies and motor vehicle thefts take place on the street, as do one-quarter of assaults. The concept of street crime can be extended to include crimes that take place in other public spaces such as parks, railway stations, and car-parks. These public locations account for the majority of recorded motor vehicle thefts, nearly half of all robberies, and over a third of assaults and other thefts. An even broader definition of street crime might include crimes that occur in places where they are likely to be witnessed by people who are not directly the victims of the crime. This definition would include crimes at locations like shops and recreational venues. Under this relatively broad definition of street crime, the majority of assaults, robberies and thefts recorded by police would be street crimes.

Table 7.1 *Location of criminal incidents, by major type of offence, from police statistics in 2000*

Type of location	Murder %	Assault %	Sexual assault %	Robbery %	Burglary/ Break & enter %	Motor vehicle theft %	Other theft %
Residential	62	40	64	7	65	19	24
Streets/ Footpaths	12	23	8	37	n/a	40	18
Other community location	11	14	13	18	9	20	17
Retail, recreational	9	18	8	32	15	15	29
Other locations	6	5	7	6	11	6	12
Total	100%	100%	100%	100%	100%	100%	100%

Source: Australian Bureau of Statistics 2001

However, we need to be careful about interpreting police statistics. Some crimes that take place in "private" places, such as family violence and sexual assaults, are less likely to be reported to police. Compared with police statistics, national victimisation data shows that a smaller proportion of assaults occur in public settings, with a higher share in private settings (ABS 1999). This difference is largely the result of a higher rate of reporting of family and other home-based violence: 48% of all assaults in the victimisation survey were family or home-based, compared with 40% of assaults recorded by police in residential locations. Some forms of property crime, like fraud, are also greatly under reported. Thus, the salience of *the street* as a location for crime is partly a function of who is affected by it and how likely they are to report the crime to police.

STREET CRIME AND THE FEAR OF CRIME

Surveys of fear of crime show that people are consistently more fearful of situations away from the home and that strangers are consistently viewed as more dangerous than family or friends (Hale 1996). The degree of concern or fear that people express about crime is related to whether they live in a high or low crime region, but is only weakly related to their actual experience of crime (Chilvers 1999), and it is unrelated to their probable risk of victimisation (Weatherburn, Matka & Lind 1996). Concern and fear about crime is related to who you are: older people are more likely to express higher levels of fear of crime than younger people, and women are more likely than men to express concern or fear about crime.

The way that we feel about places and society structure these complex patterns of fear about crime. There is a sense of familiarity and control associated with the home, versus the uncertainty associated with public spaces and our inability to control what happens there. Related to this is the fear that arises from interactions with potentially violent strangers. Public spaces can be dangerous because they bring us into contact with people with whom we have no relationship — the "unpredictable stranger" (Lupton 1999). Concerns about crime may also reflect a person's sense of vulnerability. The exaggerated fears expressed by older people may not be unreasonable given the impact that even a minor incident of victimisation may have on their physical, mental, or financial well being. Women's fear of sexual assault is both an expression of their sense of vulnerability, and of the power of gender roles in regulating behaviour (Stanko 1990).

The idea of the street as a dangerous place has deep roots. The growth of modern cities in the 18th and 19th centuries was made possible by migration on an unprecedented scale and accompanied by the development of great inequalities of wealth and privilege. Crime rates in the developing cities were high, and much of this crime was street crime. Perceptions of the city and its streets as dangerous places, where the social order was under threat from an underclass of criminal poor people, arose from concerns about class and race divisions (Graham & Clarke 1996). While our understanding of the city as a dangerous place has changed over the years, there is much continuity between the 19th century English conceptions of the "criminal classes" and contemporary concerns about ethnic gangs in western Sydney.

STREET CRIME AND THE POLICING OF PUBLIC SPACE

Street crime is central to our conceptions of criminality. At the same time, the policing of public spaces is central to our understanding of how the criminal justice system works. A large part of policing, both past and present, is about the regulation of public activities. In the latter part of the 19th century and most of the 20th century, police controlled street activities through various Police Offences, Vagrancy and Summary Offences Acts. These gave the police wide discretionary powers to deal with disorderly behaviour and to control people, who for reasons of poverty, intoxication, race, or illness, found themselves "on the street" (Cunneen 1988). As late as 1970, nearly one third of all arrests by police were for drunkenness (Grabosky 1977). Only some of the street behaviour that fell under the control of police was overtly criminal, and abuses of their arrest powers were widespread. Street offences legislation was used as the basis for discriminatory control of Aboriginal people, to break up public demonstrations, and to intervene in labour disputes. In the latter years of the 20th century, less harsh street offence legislation has lessened police authority over street behaviour. However, in its place, we now have a variety of public order control strategies that depend upon the physical restructuring and privatisation of public spaces.

Public spaces have always been used for social activities by low income, marginal groups. People use the street as a recreation space, a source of entertainment, a venue to meet, and sometimes a place to live. They also use public spaces to fight, get drunk or take drugs, and generally create "nuisance" behaviour that ranges from the trivial to the very serious. These legitimate and illegitimate activities bring them into conflict with other users of public space.

Social and institutional responses to the problem of social control in public spaces has taken two distinct but related directions: environmental design as a basis for crime prevention, and the privatisation of public spaces. Modern ideas about crime prevention through environmental design began with Oscar Newman's "defensible space" concepts: model residential developments that inhibited crime by using physical barriers and surveillance, and by developing a sense of territoriality by residents (Newman 1972). Situational crime prevention strategies have been adopted with enthusiasm by governments and now form the basis of many crime prevention programs. Over time, the focus of these design-based strategies has moved away from Newman's concepts of community control through safe and humane design to a pre-occupation with minimising crime opportunities. The standard armoury of street crime prevention now includes closed circuit television systems that monitor city streets, public toilets with blue lighting and automatically opening doors to deter injecting drug users, graffiti proof paint, and "hardened" street furniture. While Australian cities have not gone the way of the fortified, gated suburbs of many United States cities, Newman's idea of an organic urban village as the basis for crime control seems to have more or less vanished.

The policing of street crime has been dramatically influenced by the privatisation of many "public" spaces. The transition from older style shopping strips with adjacent public-use spaces to privatised shopping malls that incorporate recreational spaces has also meant a shift from public policing to privatised security. Poor, homeless, and young people stand out in these surroundings partly because they use them as much for socialising as for shopping. As a result, they are likely to be seen as nuisances or threats, subject to systematic harassment by both public and private police, and are often effectively excluded from these spaces (White 1990).

ROBBERY

One of the most dramatic changes in Australian street crime over the past decade has been the rise in robbery offences. Between 1993 and 2000, the robbery rate doubled in New South Wales, Victoria, Tasmania, and the

Australian Capital Territory, and there were large increases in Queensland and Western Australia as well (see below, Table 7.2). Robbery (that is, the taking of property from someone involving the use of threatened or actual violence) is a serious offence under criminal law: most robbery charges are indictable offences, and a high proportion of convicted offenders receive a prison sentence. So the rise in the rate of robbery is not only alarming in itself, but also has important consequences for the workload of the courts and the size and composition of the prison population.

Table 7.2 *Recorded robbery rates per 100,000 population over three time periods, drawn from police statistics in 1976 (Mukherjee 1981), 1993, and 2000 (Australian Bureau of Statistics 2001).*

	Robberies per 100,000 population				
	1976	1993		2000	
State	*All robberies*	*Armed*	*Unarmed*	*Armed*	*Unarmed*
New South Wales	28	39	61	73	134
Victoria	29	21	21	38	32
Queensland	16	30	32	34	33
South Australia	26	34	83	39	72
Western Australia	13	28	30	52	58
Tasmania	11	10	13	17	20
Northern Territory	n/a	8	19	16	18
Australian Capital Territory	n/a	18	20	38	62
Australia	25	30	42	50	72

Source: police statistics in 1976 (Mukherjee 1981), 1993, and 2000 (Australian Bureau of Statistics 2001)

Note: In armed robberies, the offender uses or threatens to use a weapon (firearm, knife, syringe or other weapon) to take property from the victim.

Rising crime rates are not in themselves particularly special. What distinguishes robbery is that this upward trend has continued throughout the 1990s when trends in other street offences have been relatively stable. In addition, new forms and modes of robbery appear to have emerged: a fashion for the use of blood filled syringes as weapons, the targeting of users of automatic teller machines, and an apparent rise in *home invasions*, the popular term for robberies committed on people in their homes (Salmelainen 1996).

Interpreting changes in the nature and extent of robbery requires an appreciation of the diverse criminal activities that can be classified as robbery. These activities range from bank raids involving multiple offenders with firearms, to shop thefts carried out under the threat of a knife, or to pushing someone in an attempt to snatch their bag. At the lower end of severity, robbery offences overlap with theft from the person, aggressive requests for money, and assaults involving disputes over property.

Armed robberies account for about 40% of all robberies recorded by police, but less than 20% of armed robberies are committed with a firearm. These figures contrast with robbery patterns in the United States, where approximately half of all armed robberies involve firearms (Rennison 2001). Most of the growth in armed robberies in Australia has involved knives as the weapon of threat or attack, while the number of firearm robberies has actually fallen over the past five years. It is unclear whether this is the result of the limited availability of firearms in Australia, or offenders' patterns of weapon choice (Ogilvie 2000).

The sex and age of victims are also important variables in understanding robbery (see below, Table 7.3). Overall, there are twice as many male victims of robberies as females, although organisational victims (that is, businesses) are the largest category of victims of armed robbery. Table 7.3 shows that there are different victimisation patterns, by sex and age, for armed and unarmed robberies. Younger males are the victims in the majority of male victims of unarmed robberies, while older females make up the majority of female victims.

Table 7.3 *Characteristics of robbery victims, 2000 police recorded crime statistics*

	Number of offences recorded by the police	
Sex and age of victim	*Armed robbery*	*Unarmed robbery*
Male, under 24 years	1,908	5,014
Male, over 24 years	1,952	3,121
Female, under 24 years	580	1,398
Female, over 24 years	1,140	2,898
Organisational victim	3,894	1,409
Total victims	10,850	12,928

Source: Australian Bureau of Statistics 2001

The spatial and temporal distribution of robbery shows significant clustering, with the majority of offences recorded by police taking place in central commercial districts, typically in the early hours of the morning (Jochelson 1997). Using a method for estimating offence dispersion, Chilvers (1998) found that robbery was the least spatially dispersed of four types of serious offences in New South Wales, with only 20 Local Government Areas accounting for virtually all of the increase in robbery rates.

The nexus between drug use and acquisitive crime is well documented (Harrison 1992), and it seems clear that the rise in Australian robbery rates is driven partly by rising rates of drug abuse and addiction (Mugford 1992). Indermaur (1995) finds that while Australian robbery rates have risen, rates for other assaultive crimes have been relatively stable. He argues that the relationship between robbery and drug use is complex, but that both are a function of the economic and social pressures experienced by young men.

VIOLENCE IN THE STREETS

Street violence generates potent images of crime, and these images, in turn, feed into a popular media obsessed with violent crime. However, street violence is less likely to involve serious injury than violence in less public settings. Whilst one quarter of all assaults recorded by police take place on the street, this proportion falls to 19% for attempted murders and 8% for actual murders. Violence resulting in serious injury or death seems to require an intimacy between offender and victim that cannot readily be achieved on the street. The preferred location for serious injury violence, including sexual assault, is typically the home of the victim or the offender (or both).

Street violence shows distinctive victimisation patterns. The national victimisation survey showed that, across all forms of assault, there are about 1.2 male victims for every female victim. However, male victims report three times as many street assaults as females, and four times as many assaults taking place in pubs and clubs. In contrast, female victims report three times more family violence and about 20% more home-based assault incidents than males. Assaults in public spaces are more likely to involve an offender who is unknown to the victim, whereas for all other forms of assault, the offenders are overwhelmingly persons known to the victim. Superficially, street violence may appear to be the obverse of domestic violence: visible rather than hidden, involving strangers who meet in a single violent event rather than family members in a sequence of assaults. However, it is important to note that these are relative differences, not absolute ones. A great deal of street violence involves female victims and takes place between people who know one another (Australian Bureau of Statistics 1999).

Changing patterns of street violence

Police statistics show that assault rates have increased markedly over recent years. Between 1995 and 2000 the national rate of assaults recorded by the police increased by just over 30% (see below, Table 7.4). At the same time, the proportion of assaults that were recorded as taking place on the street remained fairly steady at between 23% and 25%. This seems to suggest that overall assault levels, including those on the street, have grown in Australia. However, on closer examination this apparent rise in assaultive violence shows more complex patterns. Much of the national increase is accounted for by New South Wales, where assault rates increased by 72% (from 618 to 1,063 assaults per 100,000) between 1995 and 2000. Other States have experienced only small increases (South Australia and Western Australia) or no change at all (Victoria and Queensland). The national victim survey confirms that assault rates have been stable in the last decade. For the 1993 and 1998 surveys, the proportion of respondents reporting that they had been the victim of an assault during the previous year was exactly the same: 4.3%.

Table 7.4 *Recorded assault rates per 100,000 population during the 1990s, drawn from police statistics*

	1995	1996	1997	1998	1999	2000
All assaults:						
rate per 100,000	560	620	669	709	704	737
% in the street	25	25	23	23	23	23
% in other public settings	15	15	15	15	15	14

Source: Australian Bureau of Statistics 2001

Official statistics on assault are extremely sensitive to changing victim reporting patterns. It is notable that those States showing the highest rates of increase in reported assault rates between 1995 and 2000 are also those that report the highest proportions of female victims. In New South Wales, nearly half of all assault victims were female, whereas in Victoria and Queensland, females were one-third of assault victims. It is possible that the apparent increase in assault rates in recent years may be due to increased reporting and recording of assaults by female victims (especially in New South Wales), and that this trend encompasses street violence as well as home-based violence.

Spatial and temporal clustering of street violence

A readily identifiable form of street violence occurs at recreational venues where alcohol is served. These incidents typically involve young males as both victims and offenders, and mainly occur late at night or in the early hours of the morning (Teece & Williams 2000). Alcohol-related violence is inextricably bound up in patterns of leisure activity, expressions of masculinity and social processes involving collective drinking (Tomsen 1997). Under these circumstances, it is difficult to make clear distinctions between offenders and victims (Makkai 1998) or to define a boundary between high spirits and rowdiness and criminal behaviour.

Violence can occur when social or cultural life takes place on the streets. Racist violence against Aboriginal or Torres Strait Islander people, as well as homophobic violence, often involve harassment or physical violence in public locations (Human Rights and Equal Opportunity Commission 1991). The conjunction of street locations, alcohol, and young men is also central to some forms of workplace violence experienced by victims. Some occupations are especially risky: taxi drivers, sex workers, those who work in licensed premises, and police are more likely to experience violence (Haines 1997; Mayhew 2000, 2001).

DRUGS AND STREET CRIME

The policing of illicit drugs is largely concerned with the public, visible manifestations of illicit drug use and sale. Official statistics are of limited use in understanding the actual levels of criminal activity associated with different forms of illicit drugs. Most of what they tell us is about how such behaviour is policed. The Victoria Police arrest twice as many heroin consumers and providers as do police in New South Wales, while Queensland police arrest cannabis consumers at a disproportionate rate compared with other Australian jurisdictions. Australia wide, there are 75 arrests for amphetamine offences for every one arrest associated with steroid use or sale, and over 90% of all arrests for steroid offences were recorded in New South Wales and Queensland (see below, Table 7.5).

Table 7.5 *Consumers (drug users) and providers (sellers or producers) arrested in Australia by drug type and for selected States, 1998-99*

Drug type	New South Wales (all arrests)	Victoria (all arrests)	Queensland (all arrests)	Australia: drug users arrested	Australia: drug providers (sellers or producers) arrested
Cannabis	15,738	9,286	13,386	46,925	11,206
Heroin	4,659	8,153	766	10,607	3,734
Amphetamines	2,352	1,028	1,814	4,976	1,608
Hallucinogen	139	0	108	462	109
Cocaine	497	70	24	358	260
Steroids	53	0	28	83	3
Other	840	855	1,190	2,419	782
Total	24,278	19,392	17,316	65,830	17,702

Source: Australian Bureau of Criminal Intelligence 2000

The use of illicit drugs is now widespread, particularly among young people. The National Drug Strategy Household Survey, conducted in 1998, showed that in the previous month, 18% of respondents had used cannabis, about 4% had used amphetamines, and less than 1% (0.8) had used heroin. The highest rates of illicit drug use were by males aged 20 to 29: 3% of this group had used heroin in the last 12 months and 16% had used amphetamines (Higgins, Cooper-Stanbury & Williams 2000). Drug crime is also made visible through its by-products in the form of street drug markets, intoxicated or overdosed users, needle and syringe litter, and a host of other public nuisances associated with the purchase and consumption of drugs. Less visible are the long term health, economic, and social impacts of illicit drug use on users, their families, and the victims of the crimes committed as a result of their drug taking.

Illicit drugs and other crime

Where the criminal justice system is concerned, the most important impact of illicit drug use has been its association with other forms of crime. Many serious offenders (especially prisoners) have a history of drug use. Their drug use frequently begins as adolescents; continued drug use may lead to heroin addiction; and heroin users tend to commit income-generating crimes at a high rate. There is continued debate, however, over whether drug use "causes" offending, or whether career offenders are more likely or able to develop and sustain a drug habit (Chaiken & Chaiken 1990).

Australian crime data in the 1990s show a different pattern than that in other countries. While property crime rates in the United States, the United Kingdom, and many European countries have been stable or in decline since the mid-1990s, Australian crime rates have continued to rise. This may be attributable to the nature of the drug/crime link in Australia, which is dominated by heroin use, whereas cocaine has been the drug of most concern in the United States. Australian rates of illicit drug use, and in particular, rates of opiate use by offenders, are high by world standards (Makkai 2001). While the majority of offenders begin committing property crimes before they start using heroin (Dobinson & Poletti 1989), a high proportion of arrested offenders are either intoxicated when they committed their most recent offence, or they are in a state of withdrawal from heroin (Loxley 2001). Heroin users also report that they commit property crimes at a much higher rate than non-users, driven largely by the need to generate funds for drug purchases (Stevenson & Forsythe 1998).

A key development in understanding the drug/crime link in Australia has been the establishment of the Drug Use Monitoring in Australia (DUMA) program (Makkai & McGregor 2001). This program is a version of the International Arrestee Drug Abuse Monitoring (I-ADAM) program established by the United States National Institute of Justice. The DUMA program collects data on the drug use and offending patterns of people arrested and brought to police stations at sites in Queensland, Western Australia and New South Wales. The DUMA research shows that between 13% and 45% of arrestees test positive for opiates; 52% to 65%, for cannabis; and 4% to 14%, for amphetamines. However, there is a high level of variability in drug use between the sites, indicating that drug markets are localised. Another important finding is that most offenders are polydrug users who will readily shift from one drug type to another in response to changes in price, purity, and availability (Loxley 2001).

Criminal justice responses to illicit drugs

In responding to the problem of illicit drugs, criminal justice policies have gone in contradictory directions. The traditional law enforcement policy is to suppress illicit drug use and trafficking wherever it becomes visible. This is the *war on drugs* approach. In recent years, this approach has been supplemented by *harm minimisation*. Advocates of this policy argue that prohibitionist approaches have failed and that drug control policy should emphasise the management of drug related health problems, safe drug use practices, and the diversion of offenders into treatment (Department of Health and Family Services 1998).

While police assert that their primary focus is on the control of large scale drug trafficking, it is evident that most policing activity is directed at low level street drug users and dealers, often in the form of "crackdowns" designed to disperse street drug markets and their associated nuisances (James & Sutton 2000). Arrests of drug *users* outnumber arrests of *providers* (sellers and producers) by four to one (see above, Table 7.5), and most of the providers arrested are at the bottom of the chain of production and supply. At the same time that the police are "cracking down" on drug users, they are engaged in diversion, treatment, and safety initiatives, established as part of a harm minimisation approach. James & Sutton (2000) argue that the simultaneous pursuit of these two approaches has resulted in such serious inconsistencies in law enforcement practice that neither prohibition nor harm minimisation goals are being achieved.

Part of the problem in formulating an effective response to illicit drug crime is that the impact of different law enforcement or ameliorative strategies is not fully understood. Some argue that the traditional prohibitionist approach has comprehensively failed to limit the spread of illicit drugs or the crime associated with their use; instead, it has served to force street drug markets to relocate and to drive users away from health and safety services (Fitzgerald, Broad & Dare 1999). Others argue that prohibition does limit the level of drug use (Weatherburn & Jones 2001) and that aggressive drug law enforcement at a local or street level encourages users to seek treatment or cease using drugs (Weatherburn & Lind 1999). The effectiveness of some of the newer diversionary or treatment-based approaches is hard to gauge. The South Australian experiment with Cannabis Expiation Notices has produced mixed results in diverting users away from the courts (Sutton 2000). New programs such as drug courts (Freiberg 2000) hold out promise for a more rational approach, but they have not yet been thoroughly evaluated.

RESPONDING TO STREET CRIME

For most people and for most of the time, the streets and other public spaces of Australian cities and towns are emphatically safe. Crime, when it occurs, tends to be quite focused in terms of time of day, locality, and the social mix of persons moving through social scenes. Venues that might be approached with caution in late evening times can be reasonably safe and trouble free in the mid-morning hours. The high risks found in some areas are balanced by exceptionally low risks found in others. Few individuals, especially those with low risk profiles, will have direct experiences with street crime.

Despite this observation, levels of street crime are comparatively high in Australia, and when it comes to forms such as assault, the rates of victimisation rank very high in international terms. There is a clear concentration of risk factors that locate the problem of violence in clusters of social factors that are concerned with economic marginality, youth, and masculinity. Economic data indicate that an increasing gap exists between richer and poorer communities (Polk & White 1999) and that life circumstances are beginning to press down especially hard on a growing group of young people, who might be considered *abandoned* (Polk 1997) by many community institutions (work, schools, recreational organisations, housing, and health).

The growing crisis of abandoned young people poses particular problems for the control of street crime. When there are large concentrations of young people who are cut off from jobs and schools, the absence of "space of their own" (White 1990) dictates that by definition they are forced into streets, shopping malls, and parks or reserves. The streets become a major venue for social activities, and young people (more often, young men) are then engaged in a complex process of contesting with others over the use of public space.

At times, these "contests" are far from benign. Considerable friction occurs as groups of young men move through the social spaces, creating the grounds of "honour contests" (Polk 1999), which are the basis for assaults that may result in homicides. Similarly, the movement of persons of vastly different social characteristics through locations such as city streets creates multiple opportunities in the form of the presence of potential victims for prospective offenders contemplating the possibility of robbery. This social mix means that there will be reasonable numbers of potential victims and potential offenders moving through these spaces at the same time.

In some hours of the day, there will be higher levels of social constraint in city street environments, as during the mid-day period. At these times, heavy and diverse usage assures the presence of many "eyes upon the street" (Jacobs 1965, p 45); such multiple surveillance tends to reduce opportunities for potential criminal activity. City street environments are used at other times of the day when levels of social constraint are lower and the mix of people changes. The day time mix that is predominantly task focussed (shoppers and workers) is replaced by a night time mix that includes people seeking opportunities for recreation, and those who are there to service, control and profit from them. In these circumstances, sudden opportunities may evolve for a criminal encounter such as a robbery, or an assault, in a location that in other hours of the day would make such an incident unthinkable.

Criminologists and public policy planners must consider public space generally, and the streets specifically, as arenas within which there will be increasing contestation of that space, which will lead to increases in assault, robbery, and theft. An increase in street crime creates a corresponding increase in public concern for the protection of civility in public spaces. The direction of future policy in Australia is as yet unclear, although the debate over the control of street crime has been underway for some time. Some have called for an even wider use of devices such as closed circuit television cameras or for "moving on" potentially troublesome young people from such venues as public streets and shopping malls. Others suggest the need for alternatives to a strict law enforcement strategy (Brown & Polk 1996). These alternatives recognise that social and economic forces have generated an increasing number of abandoned and disconnected young people into public places, whose circumstances and behaviour require a more constructive response. The abandonment phenomenon and its causes must be addressed. We also need to develop policing and planning strategies that have the potential to defuse frictional encounters in public spaces.

CONCLUSION

Some crimes, like robbery, take place mainly in public places. Others, like assault and drug trafficking have a public "street" face but also take place in "private" spaces like homes and workplaces. The way we think and feel about crime is strongly influenced by street crime, partly because it is central to media imagery about crime (see Chapter 3) and partly because we associate street crime with dangerous and unpredictable strangers. However, these generalised fears about street crime do not take into account some important features of the way that the risks of crime are distributed. The risk of street crime victimisation tends to be high only in some places and at some times. Most robberies take place in the inner city at night, and licensed premises account for a high proportion of assaults. The visibility of street crime can lead us to over estimate its importance. For assaultive crimes, the greatest risk is not strangers but rather people that we know. The presence of people in public places whom we perceive as "dangerous strangers" may be largely the result of young people and the economically marginal who have nowhere else to go. While as individuals, we can control the risks we face on the street by choosing what we do and where we go, at a societal level the problem of street crime seems likely to continue to be a major problem. How we choose to deal with this problem says a lot about the way we regard the role of public spaces: as safe and humane spaces open to a wide diversity of people, or as dangerous places that must be under surveillance and control.

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QUESTIONS

1. What trends and patterns are likely to influence street crime in the future?
2. How can police manage street crime more effectively?
3. What factors might have led to recent changes in robbery weapon use patterns? What are the implications for legislative and policing responses to robbery?
4. Is the distinction between street crime and other forms of crime helpful or a hindrance to understanding crime?

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USEFUL WEBSITES

State-level statistics and related information on street crime and victimisation can be found at:

www.lawlink.nsw.gov.au/bocsar1.nsf

The website for the New South Wales Bureau of Crime Statistics and Research. Provides access to a range of publications on robbery, assault, drug crimes and fear of crime.

www.law.ecel.uwa.edu.au/crc/

The website for the Crime Research Centre at the University of Western Australia. Includes access to copies of the annual CRC report on crime and justice in Western Australia.

www.ncp.gov.au/ncp/

Australian government website providing information on street crime: National Crime Prevention (Attorney-General's Department). Access to information about National Crime Prevention programs generally, as well as NCP publications on public safety and crime prevention.

CHAPTER 8

WHITE COLLAR AND CORPORATE CRIME

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KEY WORDS

- white-collar crime
- corporate crime
- white-collar crime as ambiguity
- embeddedness of white-collar crime
- regulation

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INTRODUCTION

When people think of crime, they most often think of offences such as murder, burglary, or robbery. Asked to depict "the criminal", many might describe a "dubious" individual with shifty demeanour, perhaps unemployed or vagrant, whose character and behaviour clearly marks her or him as untrustworthy. Over the past 70 years, however, criminologists have been drawn to another category of crime and another form of criminal. White-collar crime has captured attention for two reasons:

- Corporate and white-collar activities cause considerable harms, far more than conventional offences.
- The enormity of these harms often does not result in harsh or even appropriate punishment. Systems of control, accountability, and sanctioning seem inequitable.

Consider the cases in Dialogue Boxes 8.1 to 8.5. The harm from corporate illegality can extend far beyond that in a normal criminal case. Imagine a mass murderer taking 77 or 189 lives or even more. What about a thief or robber who managed to walk away with the savings of 60,000 people? Corporate forms of harm make the activities of street criminals pale into insignificance. However, penalties seem disproportionately lenient. Even when white-collar criminals are punished (Dialogue Box 8.4), they rarely receive lengthy terms in jail. More often fines are imposed. Conversely, mandatory sentencing laws only recently rescinded in the Northern Territory could see a person sent to jail for 12 months for stealing small items, such as biscuits or cordial (see Dialogue Box 8.5).

Many theorists argue that mainstream criminologists have the "wrong end of the stick" when they concentrate on conventional street crime or youth offending. Theorists who ask why working class youngsters become delinquent should instead ask why the graduates of elite private schools become corporate criminals and amass illicit fortunes, yet escape any penalty.

EDWIN SUTHERLAND AND THE CONCEPT OF WHITE-COLLAR CRIME

More than 50 years ago, Edwin Sutherland was the first to break with the mainstream by arguing that criminologists should be concerned with the crimes of "more respectable" individuals and corporations. Sutherland coined the term "white-collar crime", defined as: "… crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland [1949] 1983, p 7).

In *White-Collar Crime*, first published in 1949, Sutherland documented breaches by 70 of the (then) largest corporations in the United States, companies such as Ford, General Motors, and Dow Chemicals. Sutherland claimed his data demonstrated that major US companies were in fact "recidivists". He was confident his findings showed that *crime in the business suites* was as extensive — and far more costly — than the *street crime* that dominated attention of media, criminologists, and American society. The crimes Sutherland identified were not murder and theft, but practices such as restraint of trade, misrepresentation in advertising, patent infringement, and unfair labour practices. His 70 corporations had 980 offences between them, offences committed in the 50 or so years between 1890 and the time Sutherland's data collection was completed.

Dialogue Box 8.1

Herald of Free Enterprise

In March 1987 the "Herald of Free Enterprise", a car ferry, sank in the English Channel. A total of 154 passengers and 38 crew were killed. Subsequent enquiries showed the disaster was due to negligence on the part of the ferry's operators. Schedules were always very tight, and on the day the ferry sank it was running late. It was also understaffed. Those responsible on the ferry failed to notice that when it left the Port of Zeebrugge, the bow doors were still open. It was not the first time such an oversight had occurred. Ferries owned by these operators had set sail with the bow doors open on at least five occasions, but previously no one had been hurt. This time, however, water coursed quickly into the body of the ship and it sank. The Sheen Inquiry into this disaster noted that "from top to bottom the body corporate was infected with a disease of sloppiness" (Wells 1995, p 28). However, a manslaughter prosecution against seven employees collapsed. The presiding judge concluded that "there was not evidence that reasonable prudent marine operators would or should have recognised that the system gave rise to an obvious and serious risk of open-door sailing" (Wells 1995, p 555).

Dialogue Box 8.2

Kader Toy Factory Fire

On 10 May 1993, a fire broke out in a Thai factory making "Bart Simpson" and other soft toys, mainly for Western markets. One hundred and eighty nine workers, most of them women, were burned to death, crushed, or asphyxiated; and more than 500 were injured, as they tried to escape a building whose windows had been locked and doors guarded, allegedly to stop "employee pilfering". Two managers were charged with offences relating to the fire, as was a worker blamed for starting the fire by throwing a cigarette butt onto the floor. All charges were later dropped by the Thai authorities (Chua and Wei Ling 1993).

Sutherland argued that criminological theory required a major overhaul to explain why some corporations and their directors became not just "delinquent" but "repeat offenders". In particular, psychological theories required reassessment:

> "The current tendency is to advocate emotional instability as the psychological characteristic which explains ordinary criminal behaviour, and this explanation has been presented particularly by psychiatrists and psychoanalysts. Even these advocates, however, would suggest only in a jocular sense that the crimes of the Ford Motor Company are due to the Oedipus complex, or those of the Du Ponts to traumatic experience, or those of Montgomery Ward to regression to infancy" (Sutherland [1949] 1983, p 258).

Exclusive reliance on approaches that emphasised individual maladjustment would have to be jettisoned. In their place would come sociological models, which saw offending as the product of broader forces such as social disorganisation and differential patterns of learning.

In characterising some of America's largest companies as recidivist, Sutherland intended to be provocative. He succeeded. His work stirred up much criticism, with opponents concentrating on two apparent flaws:

- *Lack of clarity about whether the corporate activities Sutherland documented were "crimes" in the accepted sense of the word.* Many cases in Sutherland's book (such as antitrust cases, that is offences against competition in the market) were not instances of an individual or business convicted and sentenced in a criminal court. Rather they were civil matters, where a company had incurred or agreed to pay a fine or rectify some damage. These critics argued that Sutherland was trying to stretch the term *crime* too far to include breaches of civil law.
- *Lack of precision about the types of criminal activities that can be described as white-collar.* Sutherland's main target was major business corporations and their executives. However, he also wanted to include crimes committed by less exalted figures (for example, motor vehicle or typewriter repairers) because they also committed offences in a work context. Taken literally, his definition would include any offence by a person of "respectability" (however defined), as long as it is in the context of their occupation.

Sutherland defended his definition. He argued that even if, in a technical sense, antitrust and other corporate violations failed to satisfy specific legal criteria, they were still real crimes because they *violated the social consensus*. The reason some companies in his sample hadn't been found guilty of a crime was that lenient enforcement bodies invented mechanisms to get them off the hook. These arguments are less than convincing. The idea that there exists a social consensus on what is, or should be, criminal is shaky given the intense lobbying that often surrounds legal reform. For example, prohibition of alcohol in the United

Dialogue Box 8.3

"Ships of Shame"

Between January 1990 and August 1991, six bulk carriers were "lost" in rapid succession after leaving ports in Western Australia. In three incidents the entire ship's crew, a total of 77 people, perished. A Commonwealth inquiry into the shipping industry found that a significant proportion of ships contracted to take iron ore and other "dry bulk" cargoes away from Australia's north west coast were unseaworthy. Regulators, however, had been turning a blind eye. Filipino and other "foreign" crews of these ships had been subject to physical abuse, starved of food, and denied telephone contact with family. Cut-throat competition between contractors was considered the major factor influencing the use of substandard ships and substandard practices (Parliament of the Commonwealth of Australia 1992).

Dialogue Box 8.4

Estate Mortgage

In 1986 an Australian company, Estate Mortgage, launched an advertising campaign to promote unit trusts promising very high returns but low risk. If one believed Estate Mortgage, "the investor could not lose". By the end of 1988, the public had invested $670 million. No doubt investors had been lulled into a sense of security by the fact that the trustee overseeing the investments, Burns Philp, was a highly respected establishment firm. In fact, as with all schemes that promise high financial return, risks were high. Millions of Estate Mortgage's funds went to speculative construction ventures, many of which never commenced. The collapse of Estate Mortgage reduced many elderly people to poverty. They had invested with the company to ensure financial security in old age. Three Estate Mortgage senior managers and directors received jail sentences. Richard Lew and Carl Davies incurred eight and 12 months, respectively, for making false statements, and Reuben Lew received three years for having improperly used his position as a company officer to gain financial advantage. As late as 1994, 60,000 investors had not been repaid a cent. Many had died waiting (Sykes 1994).

States in the 1920s was not widely supported and the sale of bootleg liquor flourished. Criminalisation had occurred, despite lack of a consensus, because of intense activism by particular social groups. More recently, as a result of lobbying by feminist groups, crimes such as domestic violence (a form of criminal assault) have begun to be taken seriously by the criminal justice system (see Chapter 9). Feminist groups didn't wait for a social consensus to emerge but saw criminalisation as a way to change attitudes.

Subsequent research has also cast doubt on Sutherland's assumption that regulatory authorities go out of their way to treat corporations leniently. Civil and strict liability provisions are used because they seem the most cost-effective way to ensure compliance. As the examples in Dialogue Boxes 8.1-8.4 show, establishing criminal intent and a standard of proof in criminal law "beyond reasonable doubt" (rather than based on the "preponderance of the evidence" in civil law) can be extremely difficult, even in the most flagrant instances of corporate harm.

At the same time, critics of Sutherland's definition can be faulted. For example, Tappan (1947) argued that the term "crime" must be confined to "activities proven to be in breach of the criminal law" (see Chapter 1) and perpetrators can only be characterised as white-collar criminals if they have been convicted in a criminal court. This means people such as British publishing mogul Robert Maxwell, who misappropriated large amounts of employee superannuation funds to prop up his failing companies, cannot be described as a "white-collar criminal" because Maxwell's behaviour only became public after he fell, jumped, or was pushed to his death off his luxury yacht (Bower 1996). Most criminologists have come to accept Sutherland's break with a legalistic definition of white-collar crime.

Problems of definition still remain. One is that the different offences that Sutherland lumps together as "white-collar" have little in common (see Daly 1989). Nelken (1997) asks rhetorically, "What, if anything, is there in common between the marketing of unsafe pharmaceuticals, the practice of insider trading, 'long-firm' fraud, computer crime, bank embezzlement, and fiddling at work?" (p 896). The term white-collar crime is ambiguous; it blurs important differences between activities ranging from mundane middle or working class crimes such as credit card fraud at one extreme and organised crime at the other.

WHITE-COLLAR AND CORPORATE CRIME: AMBIGUITY OR TYPOLOGY?

In trying to resolve these problems, researchers fall into two groups. The first group, whom we term the *sociologists*, attempts to identify common elements inherent to the admittedly fuzzy concept of white-collar crime. In particular, they explore the ways social inequality can affect both definitions of crime and the enforcement of criminal, civil, and regulatory codes. Members of the second group, the *typologists*, attempt to dispel

Dialogue Box 8.5

Jamie Warramara

On 16 February 2000, Jamie Wurramara was sentenced to 12 months' jail for stealing a box of biscuits and orange cordial worth $23 from the Gemco mine mess room in the Northern Territory. The offence occurred on Christmas Day 1998. Jamie, from a remote Aboriginal Community in East Arnhemland, was wandering on the mine site with three friends looking for rubber to make sling shots. They were hungry, and the door to the mess room was unlocked. While one member of the group kept look out, the other two slipped in and stole the food. The sentence, imposed under the Northern Territory mandatory sentencing laws, received much publicity. This and other cases led to protests by Human Rights groups and concern from the Federal Government. The laws were finally abolished in September 2000 after a change of government.

ambiguity by making clear distinctions between types of white-collar offending. Their focus is on the different ways that white-collar offences occur and might be prevented or reduced.

Consistent with their interest in broader phenomena, sociological approaches to white-collar offending centre on understanding the processes whereby some activities (but not others) come to be defined as crimes. *They argue what is central to all white-collar offending is its ambiguity, its tendency to resist accountability and punishment.* Wilhelm Aubert (1952) was one of the first to emphasise this aspect. He was convinced that we begin to understand white-collar crime only when we start to unravel the broader social forces that shape what is and is not considered crime.

Typologists, on the other hand, believe that researchers must resolve all problems of definition and introduce greater conceptual precision. *They argue for developing typologies of the different forms of white-collar and corporate lawbreaking.* By understanding these different forms, remedies to control white-collar crime may be identified. Typologists disagree, however, on what should and should not be considered white-collar crime. Some argue that the term can apply only to actions that break laws that attract criminal penalties (Tomasic 1994). Others believe that offences that attract civil and administrative sanctions should be included since these are the sanctions most often applied to harmful behaviour by the powerful (Clinard & Yeager 1980).

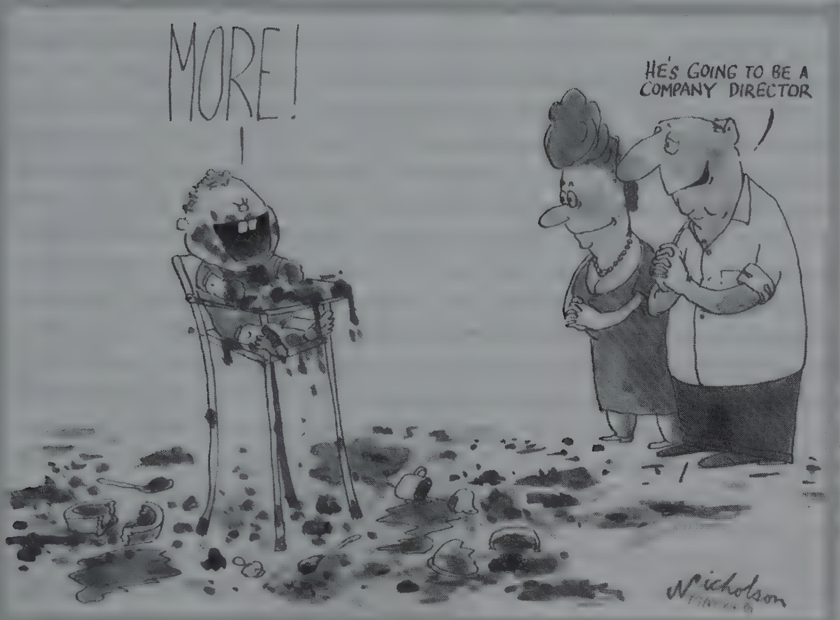
Other matters need to be considered in constructing a white-collar crime typology. First, should the term white-collar criminal refer only to an individual offender, or can it include a company? Clinard and Quinney (1973) proposed a distinction between *occupational crime* (that is, crime committed by an individual or group in the course of their work) and *corporate (or organisational) crime* (that is, crime committed by an organisation using organisational resources). Secondly, there is the issue of *who stood to gain from the offence*. In some cases, it is an individual. In others it is a company, and in still others it is both (see, for example, Tomasic 1994). Finally, an adequate typology must distinguish between *types of behaviour*. Early definitions centred on financial crimes such as fraud and embezzlement and did not include violent offences. Yet, there are many examples of violent corporate crime (see Dialogue Boxes 8.1-8.3). These are as important to explain as cases in which investors lost millions of dollars (Dialogue Box 8.4). Many other kinds of activities, including crime by the state, also could fall within the category of white-collar crime. It is easy to see how the debates over defining white-collar crime have led some to develop more elaborate and precise categorisations (see, for example, Langan 1996). The problem is that real-life examples still defy location even within the most fine-grained typologies (see Dialogue Box 8.6).

Dialogue Box 8.6

Distinguishing the "embezzler" from the "high performing executive"

Where should embezzlers and embezzlement be located in a typology of white-collar crimes? At first glance, embezzler appears to be a well-bounded category: it is an *individual* acting *against her or his employer*. But how does one draw the line between embezzlers and corporate executives who set high salaries, share entitlements and commissions, and receive other perks on the grounds that high performing executives make better profits and high performers need incentives? Recent experience suggests that massive payments to directors and executives do not equate with good company prospects. The events surrounding company collapses in recent years have seen some executives paid large financial bonuses shortly before workers were left without jobs, and in some cases, without redundancy, leave pay, and superannuation. Could these executives be termed embezzlers? This example shows that what may initially seem a simple offence category is not so simple after all.

While typologists do help to clarify the many forms that white-collar and corporate crime may take, our sympathies are with the sociologists' group. We think that the construction of elaborate typologies misses the key point that what is or is not white-collar crime will always be contested. White-collar offenders and offences always resist being labelled *criminal* offenders or having their activities defined as *criminal* harms.


MORE!
HE'S GOING TO BE A COMPANY DIRECTOR
Nicholson

Cartoon by Nicholson from *The Australian*, 29 May 2001

White-Collar Crime and Embeddedness

Underlying Sutherland's broad definition are three claims about white-collar illegalities:

- certain harms are embedded in mainstream business or commercial activity;
- because of this embeddedness, these harms are less able to be regulated or controlled; and
- because of these regulatory problems, people responsible for "commercially embedded" harms are less able to be made accountable and punished.

There are many ways white-collar crimes and harms are embedded in normal business activity. We focus here on two. First, laws are framed in ways that accept serious harms as *normal, unavoidable by-products of business activity*. Nancy Reichman (1998) coined the term *regulatory authority* to describe this phenomenon. Secondly, even when illegal behaviour is not "normal", it may be so embedded in legal or other institutional frameworks that it is impossible to dislodge. Here the illegal behaviour is parasitic. Getting rid of "parasite" would mean changing the law so that even legitimate business activity is impaired. Laws that facilitate productive, useful business activity also provide loopholes for harmful, illegal behaviour.

Embedded crime 1: A "normal" part of business activity

Laws that protect or allow damage to the environment illustrate this form of embeddedness. Environmental regulations do not aim to stop pollution altogether. More often, they specify "appropriate" quantities of pollutants that can be released into the environment. An offence only occurs when release is in excess of the prescribed limit. Pollution, whether in the form of greenhouse gasses (such as carbon dioxide) or more obvious chemical pollutants (such as chlorine), is a by-product of many industrial processes. The most effective way to eliminate pollution may well be to close down the responsible industry. Likely candidates include logging (because of destruction to native forests) or mining of brown coal for electricity generation (because of its contribution to greenhouse gases). Eliminating logging or mining for brown coal would be difficult and would itself create problems. There would be a drastic drop in employment in certain areas of the country, with flow-on effects to service industries. Retail spending would decline. The subsequent drop in government revenues from personal and industry taxation would have repercussions for public services such as schools, hospitals and welfare services. Governments are reluctant to enact laws that threaten an industry's ability to generate employment and revenue. This gives industries powerful "regulatory authority" in determining the shape and content of laws and regulations.

If powerful companies, industries and individuals can ensure laws are framed in ways that suit their interests, one would expect statistics to indicate that the more powerful companies and individuals are less likely to be prosecuted. Prosecution decisions would reflect not so much harms caused as whether or not the alleged offender was powerful within a relevant industry. Data on white-collar prosecutions are consistent with this prediction. Smaller companies have more difficulties in complying with laws, whether health and safety (Haines 1997), environmental (Croall 1989), or corporate (Sutton & Wild 1988). Further, smaller companies are more likely to be prosecuted by regulatory authorities (Clinard & Yeagar 1980). Much the same applies to individuals (see Dialogue Box 8.6).

Large businesses can avoid prosecution and sanctions for other reasons. They have considerably more resources to put into the compliance effort, so they can be appear to be more "virtuous" (see Haines 1997). When "doing the right thing" is not in their interest, they can afford better legal advice and devise schemes to remain within the letter of the law whilst defying the spirit. This is the reason large firms often pay minimal tax and yet remain "law abiding". Small firms are less able to do this and so end up breaking the law. This point was illustrated in the "Bottom of the Harbour" tax schemes in Australia, where small- and medium-sized businesses wanted to follow the lead of larger firms and pay little or no tax, but unlike large companies, could only do so by resorting to illegal behaviour (Sutton 1989a). Even when large firms are the target of regulatory activity, they often are able to thwart an investigation. The failure of high profile criminal prosecutions, such as in the "Herald of Free Enterprise" case (Dialogue Box 8.1), demonstrate the enormous resources that major companies can deploy.

Embedded crime 2: White-collar offending as parasitic behaviour

Sometimes the most flagrant white-collar or corporate offenders enjoy immunity because they are able to piggyback on legal behaviour. In doing so, they behave like a parasite, exploiting the underlying system. Destroying the parasite (white-collar crime) may well mean destroying the host. A good example of this is the limited liability company, a legal mechanism created during the late 18th century to allow entrepreneurs to initiate a business venture without being personally liable for consequences if it failed. Under the law, the limited liability company became a "person" in its own right, responsible for assets and debts accrued. This was an essential legal development to stimulate capitalist activity and economic growth, since without some legal protection wealthy individuals would be unlikely to invest in large companies and help create successful industries. The limited liability company is now a central feature of capitalism. Whilst successive governments have striven to regulate corporations, none would advocate getting rid of the limited liability company.

At the same time, the limited liability company is a sort of *crime machine* capable of promoting many forms of white-collar offending. Investors and creditors may be left penniless when a mismanaged or fraudulent company goes into liquidation. However, directors may be able to fold one company and form another, a "phoenix company", rising from the ashes of the old. Banning people with poor records from positions as directors, an often used regulatory tool, may result in close family members taking on directorships with those banned still having considerable influence. Perhaps the crudest exploitation of the limited liability public corporation is the "Ponzi" scheme, where promoters attract shareholders by promising massive dividends. No real business is conducted, but first wave subscribers are payed handsome dividends out of second and subsequent waves of share investment, which then attracts further investors.

Embeddedness also can help explain why illegal behaviour by employees (a form of occupational crime) may flourish (see Mars 1982). Good relationships between employers and employees are important to the smooth running of companies. Practices can develop that enhance this relationship, yet are illegal and even threatening to the business. For example, employees may be allowed to use company resources for personal purposes. They may borrow a tool, take some equipment home on the weekend, or even bring in a home project to do during work time. One of the authors worked in a record store whilst studying and, along with all employees, was allowed to borrow new music tapes to copy at home. There was a bookkeeping system in place to ensure tapes were not lost. Nonetheless, the scheme was in clear breach of copyright laws, and customers often purchased second hand goods sold as new. Over time workers may come to see such perks as legitimate entitlements to make up for poor working conditions or low wages.

UNDERSTANDING WHITE-COLLAR CRIME

Understanding white-collar crime requires understanding the broader system of which it is a part. Political-economic factors influence what sorts of abuse become labelled as white-collar crime. Karl Marx wrote about the ways in which the economic base of capitalism affects and distorts other systems, including law. Indeed, it could be argued that capitalism not only creates greater opportunities for white-collar crime (for example, the limited liability company), but also highly motivated offenders. Adam Smith (1776), an important figure in justifying capitalism, argued that the value of competitive markets lay in their ability to produce beneficial outcomes through *self-interested* behaviour.

Within capitalism, emphasis is on an individual (or company) getting ahead and taking risks. These are key elements in the motivation of white-collar offenders. Other values such as justice and equity may be viewed as outmoded and unsuited to business success. In *Moral Mazes*, a study of large US companies, Jackall (1988) shows that corporate men and women do things a normal "moral" individual would not contemplate. A recent Australian example is the collapse of the retailer Harris Scarfe. In evidence given in the South Australian Supreme Court, the former Chief Financial Officer detailed how over many months he manipulated the retailer's books to achieve profits allegedly demanded by directors (Wood 2001).

Merton's strain theory (see Chapter 5) has been used to explain white-collar offending. In this analysis, society's emphasis on material wealth and success is only achievable by a minority of companies and individual managers. Those who find opportunities blocked may resort to illegal means.

Max Weber's analysis also helps understand how companies can obey the letter of the law, whilst avoiding the spirit. Weber wrote about the formalism of modern law, and why predictability was necessary for the conduct of business enterprise (Rheinstein 1954). His work shows why the cliché of a guilty party "getting off on a technicality" is more often true of white-collar offenders. They are the ones who can buy the best legal resources to challenge evidence and legal procedure. A good illustration is the collapse of the trial of individuals in the Russell Island land fraud in Queensland (Sutton 1989b).

Finally, to explain white-collar crime we must understand how power works. Sutherland was convinced regulators treat business offenders differently. This statement has some truth, but it is based on a *distributional* (or possessive) view of power, where groups that are able to get their way have considerable power and others have little or none. It may be better to take a *relational* view. This view of power emphasises how influence is exerted through systems of interdependencies between individuals, organisations, and institutions. The relational view would argue that it is misguided to see legal systems as basically fair, but able to be influenced and distorted by some individuals and groups who use power and resources to get special treatment in some instances. Rather, it suggests that the factors that help white-collar offenders gain and entrench economic power are the very same that give them power in the legal system.

For this reason, calls to increase prosecutions will have limited impacts on corporate behaviour, and may generate lobbying by companies wanting an end to what they see as over regulation. While few people like corporate harm, public attitudes are affected by the roles that companies play in the broader society. For example, a major firm polluting the air in a one-company town is unlikely to face legal challenge by residents whose livelihoods depend on the company's not moving away from the area (Bachrach & Baratz 1970).

CONTROLLING WHITE-COLLAR CRIME

Some criminologists argue that prosecuting white-collar offenders, particularly high-placed senior managers and directors, is likely to have a salutary effect. Put simply, individuals of higher wealth and status have a lot to lose and are more likely to be deterred by the threat of a criminal sanction than are street offenders (Pearce & Tombs 1990; Hopkins 1995). Criminal law is strong on symbolism, but its track record in controlling crime (whether white-collar or otherwise) is not impressive. Mounting criminal prosecutions in white-collar cases is expensive, stretching the limited budgets of regulatory authorities. If prosecutions go forward, they are more likely to be of smaller firms or weaker, less competent actors. Targeting corporate managers for prosecution may simply allow a company to scapegoat an individual for a system-wide problem. Governments today are as concerned to *maintain conditions* for business investment as they are to *prevent* white-collar crime. They are unlikely to endorse sustained prosecution of high-profile companies because of the chilling effect on investment.

Some things can be done. Regulatory initiatives may reduce corporate harms and opportunities for powerful individuals to abuse their positions. These include civil penalties and injunctions, where courts require companies to behave in a certain way or desist from behaving in a certain way, and publicity measures, where companies are required to disclose illegal or undesirable behaviour. An innovative measure used by the Australian Securities and Investments Commission (ASIC) tries to educate investors. On April Fool's Day each year, ASIC advertises an investment scheme that lures investors in ways similar to bogus schemes it has investigated. When a response is received, the potential investor is informed that the scheme was bogus and is sent information on how to review a prospect before committing.

John Braithwaite (1993) argues for using informal and formal approaches, including both civil and criminal penalties, to curb white-collar crime (see Figure 8.1). Regulators should begin with persuasion (at the base of the pyramid) and only escalate to more punitive, intrusive measures when persuasion and civil remedies fail. His argues that strategies of persuasion build trust between the regulator and regulated which, in turn, engenders compliance. Premature resort to a heavy handed approach will alienate companies and lead to non-cooperation and non-compliance. As Figure 8.1 below illustrates, regulators will concentrate at the bottom of the pyramid. Only in case of an inadequate response will regulators escalate to the next level. The amount of space at each level of the pyramid represents the proportion of enforcement activity at that level (Braithwaite 1993, p 87).

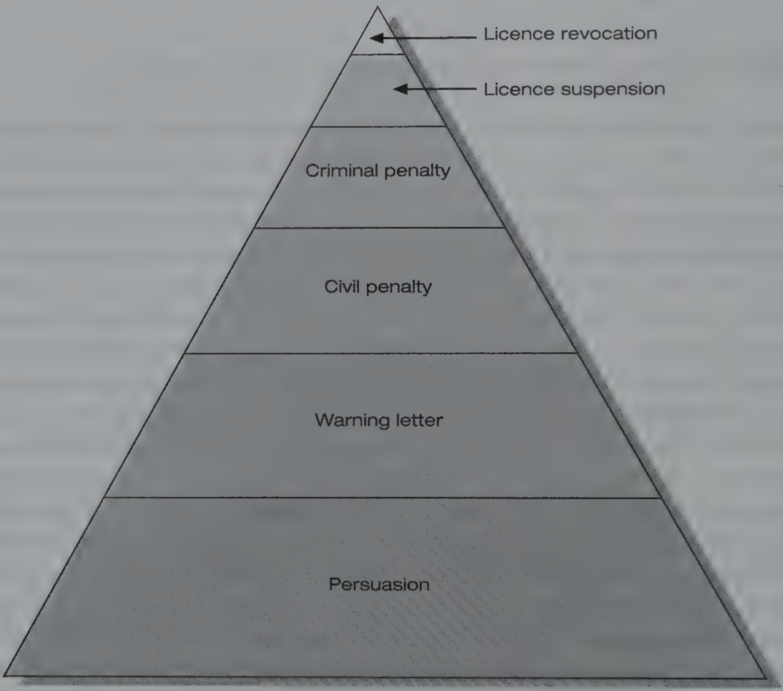


Figure 8.1 *Braithwaite's (1993) Enforcement Pyramid*

Nonetheless, trying to use laws and regulations to extinguish harmful business activity that is embedded in economic and legal institutions can be like trying to drown a fish in water. Business is perfectly adept at turning rules to its own advantage. Further, Braithwaite's assumption that most businesses are well intended can be viewed with scepticism. There is plenty of evidence that many businesses are far from virtuous. Capitalism thrives precisely because it is based on self interested behaviour. Thus, it may be better to analyse businesses' capacities to act lawfully (or not) in light of specific industry or economic contexts. A business will comply with, and sometimes even exceed, regulatory requirements when the broader economic and regulatory context guarantees that it will succeed through exemplary behaviour rather than by cutting corners. However, mobilising this business logic requires activist regulators. Governments may need to intervene in the commercial environment to a much greater extent than current economic policies allow, if they are to provide the motivation for companies to reduce their pollution, take care of their workers, and act with financial integrity.

CONCLUSION

Sutherland is a towering figure because he was the first to draw criminology's attention to abuses of power by companies and respectable people, and to name them white-collar crimes. He invited criminologists to describe and explain the illegalities of businesspeople and corporations, not just poor and disadvantaged individuals. While white-collar crime is now a standard term in criminology and popular culture, it remains an elusive and evocative concept, not easily defined. Such ambiguity is appropriate: black and white distinctions between practices that are criminal and non-criminal are not possible. Harms perpetrated by businesses and businesspeople are intertwined with, and embedded in, the broader economic and political system in two ways. First, powerful companies and individuals influence law and resist accountability by ensuring regulation is framed in ways that make their harmful behaviour accepted and normal. Secondly, white-collar offenders can so embed harmful activity in mainstream legal and economic systems that eliminating these behaviours would impose too great a burden on the entire business sector. The key to understanding white-collar crime is develop or build on theories that explain the political, economic, and social environments in which it flourishes.

To reduce white-collar crime, regulators must apply a range of techniques that include, but are not limited to, prosecution under criminal law. Contrary to popular sentiment, these harms cannot be eliminated simply by "getting tough on powerful criminals". Nor can they be reduced solely by improving regulatory approaches. Research and policies that focus entirely on these aspects ignore another arena requiring change: the structure and values of the business and political environment.

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QUESTIONS

1. How does Sutherland's idea of white-collar crime change criminology? What common conceptions of crime and what criminological theories are challenged by the concept of white-collar crime?
2. How is white-collar crime embedded in normal business activity? What are the implications of this embeddedness for the control of white-collar crime?
3. Look up "Ponzi" on the Internet. Find out what his scheme entailed. How does it illustrate the possibilities of the corporation as a "crime machine"?
4. Survey your class about the "perks" of their work. What remuneration do they experience in addition to their wages? Can they borrow equipment? Do they get a discount on purchases? Are all of these activities legal? Do they see them as "rights" or privileges? How would they feel if they were taken away?
5. According to Adam Smith's famous dictum on capitalism, "It is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages" (*Wealth of Nations* [1776] 1982, p 119). What are the implications for white-collar crime of an economic system so deeply dependent on individual self-interest?
6. Find the ASIC website, www.asic.gov.au and search it using "April Fool" to see how ASIC attempts to educate gullible investors. Read the educational tips on how to check that your investment is safe. Would you be fooled?

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USEFUL WEBSITES

www.asic.gov.au

Australian Securities and Investments Commission (ASIC) website, which outlines its functions in regulating financial crime. The website has links to consumer protection with pages that outline common financial scams

www.gov.au

Entry website for all government departments, Federal, State, and Territory. Link to the State or Territory you want to explore. For health and safety, follow the links on business or employment from the State entry page. For environment, follow the links on environment. Because governments change their URL addresses regularly, learning how to follow the links from a central site is essential.

www.workcover.vic.gov.au

Website relating to all health and safety matters in Victoria. Contains information on relevant legislation and prosecutions under the heading "Recent Prosecutions".

www.abc.net.au/rn/talks/bbing

Background Briefing is a radio programme of ABC Radio National. This website contains its investigations into white-collar crime, and transcripts are available at the site.

CHAPTER 9

CRIME AND THE HOME

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KEY WORDS

- public/private dichotomy
- domestic violence
- family violence

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Introduction

This chapter focuses on crimes within the Australian home including homicide, domestic violence, family violence, child abuse, and elder abuse. However, criminologists now recognise that crimes such as fraud and theft are also common within the home. We begin by examining what "the home" means for those in different social locations. For instance, whose privacy has been protected through an historical reluctance to regulate crime in the home? Has the reluctance of police or welfare officials to intervene in the home extended to all families? What about Aboriginal families and working class families? How might one's vulnerability to crime, as victim or offender, be shaped by one's connection to home, or by the lack of a home? What happens when one's home is also an institution? What about homeless people?

MEANINGS OF HOME

What do we mean when we speak of crime and *the home*? Is it the physical space or does the home denote a personal or intimate connection, a network of caring relationships or obligations, or a private place beyond the reach of others? Does the home mean the same thing to all people, or might it vary with who we are? For some people or cultures, home may signify a spiritual or other connection to the land or geographical location. Home is often assumed to be positive; but for some people, it may be something they lack, are denied, or may be a place of risk or confinement. Home also may be used to name a setting for care or constraint outside the family, such as an aged-care home or a home for the mentally ill.

Women's relationships with home are particularly ambivalent. While home can offer pleasures and security to women, it is also the location of a great deal of unpaid work, and for some, of violence and threat. For many immigrants, leaving home and struggling to create a new life in a new homeland may offer considerable pain and great challenges. For Indigenous Australians, a capacity to maintain a connection with "home", however defined, has been affected profoundly by colonisation and its ongoing effects (see Dialogue Box 9.1).

> "We may go home, but we cannot relive our childhoods. We may reunite with our mothers, fathers, sisters, brothers, aunties, uncles, communities, but we cannot relive the 20, 30, 40 years that we spent without their love and care, and they cannot undo the grief and mourning they felt when we were separated from them. We can go home to ourselves as Aboriginals, but this does not erase the attacks inflicted on our hearts, minds, bodies and souls, by caretakers who thought their mission was to eliminate us as Aboriginals." (Link-Up [NSW] Submission 186, as cited in Human Rights & Equal Opportunity Commission [HREOC] 1997, p 12).

The Loss of Home

Australian histories show that in the 19th and early 20th centuries, the poor and the homeless were targets of policing under laws on vagrancy and public order. Young people were institutionalised in industrial schools, and some homeless women were held in the Female Factory established in Parramatta in 1821 (Seymour 1988; Hirst 1995). Today homelessness is linked to crime and criminalisation in many ways (Alder 1991). Fears about becoming homeless may prevent people from leaving abusive homes. People who are homeless may be vulnerable to victimisation on the streets or in alternative housing, and they may be at increased risk of criminal offending to support their survival especially through stealing, prostitution and the use of alcohol or other drugs to ease the pain of "living rough". The homeless are often represented as distasteful or threatening to the wider community, and thus, may be targeted by the police through the use of public order legislation and other forms of control irrespective of any actual involvement in crime. Moreover, criminal justice intervention, especially in the form of incarceration, renders some people more vulnerable to homelessness. Indigenous people are over-represented among the homeless because of multiple disadvantage: racism, the absence of accessible programs, family violence, the impact of incarceration, and a lack of post-release support.

Between 60,000 and 105,000 people are homeless on any given night in Australia, including many families with children (Commonwealth Advisory Committee on Homelessness [CACH] 2001, p 8). Domestic violence is the main reason for homelessness among sole parents with children.

Factors that give rise to homelessness include poverty, the lack of affordable housing in the private market, unemployment, and inadequate social welfare policies. These factors have differential affects for different social groups. Racism, sexism, homophobia, and attitudes to the poor limit housing options for those groups. Ex-prisoners, the disabled, alcohol or other drug users, and those with mental illness or chronic ill-health may be at higher risk of becoming homeless.

THE PROTECTION OF PRIVACY - WHOSE PRIVACY?

> "The public/private divide refers to the way in which law differentially constitutes the person, depending on the person's location. The legal idea is that in public the person is legitimately a subject of legal regulation as well as a legal actor, but in the private sphere the person is just that: private, free from law to be *his* particular self..." (emphasis in the original) (Naffine 1995, p 20).

Criminologists often compare and contrast "crime in the home" with "crime in the streets". Historically the home has been treated as a private space where behaviours that might otherwise be considered to be crime were ignored or tolerated. In the past, failures by the police and courts to intervene in domestic violence or child abuse incidents were justified on the basis of the privacy of the home.

The public/private dichotomy shows us how law has developed on the assumption of male experiences and qualities, that is, the public person has been constructed as male. Law has traditionally considered a *family* to be a two-parent heterosexual couple with children, headed by a male. Thus, the notion that law should not intrude on the private sphere has endorsed men's authority over women and children. During the 1960s and 1970s, feminist activists challenged the legal system to recognise and facilitate women's participation in the public sphere and to become more responsive to harms occurring in the private sphere.

However, not every family's privacy has been afforded the same importance. Nor has legal intervention in the family been neutral or necessarily positive. Legal regulation of family life typically draws on assumptions based on white, middle class morality. The poor, those on welfare, Indigenous Australians, and non-traditional families have been vulnerable to surveillance and legal intervention that seeks to impose particular standards.

Dialogue Box 9.1

The Stolen Generations

Since the invasion of Australia by the British colonists in the 18th century, Indigenous families, their homes and parenting practices have been subject to scrutiny and policing. Policies and practices differed throughout Australia and over time. In the 19th century under the influence of Darwinism, some officials believed that Aboriginal peoples were a dying race that could not survive. Further, it was believed that mixed race children might merge into the white community and lose their Aboriginal identity. Thus, light-skinned children were targeted by welfare officials for removal from their families. The forced removal of Indigenous children by the police and welfare authorities was common. Some children were kidnapped and put to work for Europeans; they were coerced or tricked into schools or missions. Removing children from their families was intended to teach them European values, including Christianity, and to distance them from their families and culture. Some children placed in institutions were subject to abuse and or neglect. Girls were placed as domestic servants in European homes to train them in European ways, with the expectation that they would pass this knowledge on to subsequent generations, provide cheap labour, and reduce their child-bearing. Many young women were sexually abused in such settings and their children too became targets for removal (HREOC 1997).

In the 20th century, general child welfare provisions began to be applied to Aboriginal families and large numbers of Aboriginal children were removed from their homes, not because they were light-skinned, but rather because they were designated "uncontrollable", destitute or neglected. Unlike other Australians, Aboriginal people did not have unqualified entitlements to social security until 1966, and thus they did not receive government support in times of need. HREOC concluded that from 1910 to 1970 "between one in three and one in ten Indigenous children were forcibly removed from their families and communities" and that "[i]n that time not one Indigenous family has escaped the effects of forcible removal..."(1997, p 37). Some commentators argue that policies promoting the removal of Indigenous children from their families ceased by the 1970s. Others say that contemporary criminal justice and welfare practices continue to have similar effects. Despite claims that removal policies benefited Indigenous children who were removed, evidence indicates that those policies had ongoing negative effects, including poor health status and higher levels of criminal justice intervention.

A BRIEF HISTORY OF CRIME AND THE HOME

From colonisation and for much of the 19th century, white Australian women had few options but marriage. The colonies had many more men than women, fertility rates were high, and women were constrained by childcare responsibilities. Politics and culture were male dominated, and the few opportunities for work outside the home for women were poorly paid. There were few social or legal constraints on men's violence against their wives or other women, and married women had little to gain from seeking to prosecute violent husbands. Moreover, violence against women was commonplace in the wider culture (Allen 1990, ch 2). Young women working in domestic service were vulnerable to sexual assault by men in the homes where they worked.

Sexual and physical assault of women were crimes in the colonies under the laws inherited from England, with the exception of sexual assault committed by a woman's husband, which did not become an offence in Australian States and Territories until the 1980s. However, existing laws were rarely enforced. Historically, domestic violence was ignored by the police and other agencies, and it was deemed to be a private matter unless it disturbed the peace. Prosecutions of sexual assault were commonly unsuccessful; they frequently turned on assumptions about the chastity or good character of the complainant.

Women did not acquiesce in all of this. Many wished to prosecute, applied for maintenance orders, or used the limited divorce laws available. Women activists and their male supporters campaigned throughout the latter part of the 19th century, raising such issues as wife beating, divorce law reform, and increasing the age of consent (Allen 1990).

Crimes by women during the 18th and 19th centuries were often home-related, reflecting the social context in which they lived. Unwanted pregnancies could jeopardise married women's health and their material status, and they were catastrophic for unmarried women. Women's crimes included infanticide, abortion, babyfarming,[1] and casual prostitution undertaken to supplement household income. Small numbers of women were also charged with homicides of spouses, and some were sentenced to death for this offence. With the exception of homicide, evidence suggests that these offences by women were under-policed and somewhat tolerated. However, Allen notes that the changing political context in the early 20th century resulted in less tolerance of women's crime. Once women achieved the vote, they were held more responsible for their actions and were more likely to have their character challenged. Improvements in women's opportunities for paid work and declining fertility rates resulted in a marked decrease in offences such as infanticide (Allen 1990, chs 1 & 5).

From the early colonial days in Australia, orphaned, neglected, or merely poor children were seen as a problem and as at risk of becoming criminals. New institutions such as industrial schools for neglected or destitute children and reformatories for offenders were developed during the 19th century in response to the problem. However, distinctions between children who were destitute and those who offended were often blurred. For instance, some children convicted of vagrancy were imprisoned in adult jails (Seymour 1988, ch 1). For much of the 20th century, law and policy continued to blur the distinction between young offenders and children with welfare needs. In the 1970s the term *child abuse* was first introduced to describe non-accidental injury to children and the focus of public concern shifted from child neglect to physical abuse.

CRIMES IN THE HOME

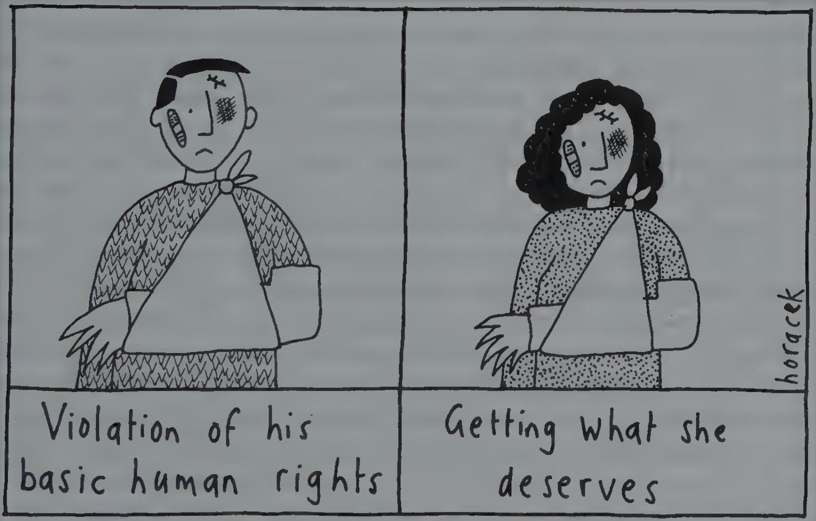
Homicide

Homicide in Australia most commonly occurs within the home. Approximately six out of ten homicides occur within residential premises, usually the home of the victim or offender (Mouzos 2001, Table 1). Homicide commonly occurs within the family (approximately 40%) or between "friends" (approximately 13%). More than one in five homicides occur between intimate partners, and most of these are committed by men (Wallace 1986).

Patterns of homicide vary markedly for men and women and for Indigenous and non-Indigenous Australians. Mouzos (2001) found that almost 60% of female victims aged 15 years and over were killed by intimate partners; nearly all resulted from a "domestic altercation", and most occurred in a private residence. By contrast, male victims were more often killed by friends or acquaintances, typically after drinking. Women who killed typically did so in response to ongoing violence by an intimate partner.

Homicide is more often intra-racial than inter-racial. However, homicides of Filipino women in Australia are an exception to the pattern. Filipino women are approximately six times over-represented as victims of homicide in Australia, and most are killed by current or former intimate partners who are not Filipino. Research indicates that gendered immigration patterns, the absence of appropriate support for the women, and the attitudes of some men who seek partners from the Philippines contribute to the high homicide rate (Cunneen & Stubbs 1997).

Indigenous homicide rates are markedly higher than non-Indigenous rates. Homicides between Indigenous people are almost twice as likely to involve intimate partners, have a higher proportion of women and other family members as offenders and victims, and are more likely to arise from "domestic altercations" (Mouzos 2001). High homicide rates also have been found in Indigenous communities in countries such as Canada; they suggest that colonisation and its effects, coupled with social and economic marginalisation and racism, contribute to homicide rates in those communities. However, the high level of homicide between intimate partners indicates the need to include gender relations, not just race and ethnic relations, in any analysis (see Chapter 6).


Violation of his basic human rights
Getting what she deserves
horacek

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Domestic Violence

Domestic violence is the term used by governments across Australia to refer to

> "... an abuse of power perpetrated mainly (but not only) by men against women in a relationship or after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other...The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. Many forms of domestic violence are against the law." (Partnerships Against Domestic Violence, undated).

While the term domestic violence is widely used, some people think that it trivialises the violence. Other terms in the literature include intimate violence, wife abuse, spouse abuse, wife battering, partner abuse, and family violence. Objections could be raised concerning each of these terms, and there is no consensus amongst researchers on which term is best. Definitions of domestic violence also vary in legislation and policy across Australia. For example, not all States define violence between same-sex couples as domestic violence.

Official crime statistics are poor measures of the amount of domestic violence because of barriers to reporting incidents to the police, including the stigma and shame victims face and their fears of reprisals. Crime victimisation surveys and specialised research projects indicate that domestic violence continues to be under-reported to the police.

The Women's Safety Survey provides national prevalence data derived from a random sample of Australian women (Australian Bureau of Statistics (ABS) 1996). For women currently in a married or de facto relationship, 8% (345,000 women) reported violence by that partner during the relationship and 2.6% (111,000 women) reported violence by that partner during the last 12 months. Women reported much higher levels of violence in previous relationships: 42% (an estimated 1.1 million women) had experienced violence by an ex-partner. More than two-thirds of women with children who had experienced violence said that the children had witnessed violence. Domestic violence commonly occurred during pregnancy. Women were less likely to report domestic violence to police or other agencies if the offender was a current partner rather than a previous partner (Coumarelos & Allen 1999).

Domestic violence does not necessarily cease at the end of a relationship, and may even increase, especially when there are disputes about children. The Women's Safety Survey (ABS 1996) found higher rates of physical and sexual abuse for separated couples than married couples. Australian homicide research also shows that separation from a partner is an especially vulnerable time for women. Alison Wallace (1986) found that almost half of the women killed by spouses in New South Wales were separated or separating when they were killed, but women rarely killed men from whom they were separated. Separate or divorced women with children also may be vulnerable to repeated domestic violence when they meet their former partner for child contact. Women also have been attacked by former partners at court, and many courts now have safety protocols to protect women.

It is difficult to measure the incidence of domestic violence, that is, the number of times a victim may be abused by a partner during a year. This is especially so if we include emotional and psychological abuse, since women report that "psychological and emotional abuses [are] built into their relationships, and [occur] around 'the little things' of daily life" (Bagshaw & Chung 2000, p 9). Moreover, infrequent physical violence may result in enduring fear.

Most victims of domestic violence are women. Australian studies show that between 88 and 92% of victims are female (Bagshaw & Chung 2000, p 2). Some researchers, especially those who rely on the Conflict Tactics Scale (CTS) to measure domestic violence, insist that women are equally as violent as men. The CTS lists a range of behaviours such as shouting, hitting, kicking, or threatening with a gun; and those interviewed are asked how many of each of these behaviours occurred in their relationship in a given time period. Researchers have criticised the CTS for, among other things, measuring reported incidents of violence without reference to the *contexts* of the violence, failing to acknowledge that some violence may be in self-defence, and failing to pay attention to the motivations for and consequences of the violence. For instance, few men but many women report living in fear of their partner, taking drastic steps to escape or to avoid future violence by their partner, or having been injured by their partner (Dobash et al 1992). Researchers using measures other than the CTS find that many more men than women use violence against a partner.

Studies of men who perpetrate domestic violence show that they are "highly self-oriented, lack empathy and frequently deny responsibility, minimise the harm done, and deflect blame onto others, particularly women" (Dobash & Dobash 1999, p 4). A New Zealand study of a random sample of 2000 men (Leibrich, Paulin & Ransom 1995) found that 21% admitted using physical violence against a female partner in the last year, and 35% admitted having done so at some time in the past. Figures for psychological abuse were much higher: 53% in the last year and 65% at some time. Men who physically abused their partners were more likely than other men to say that domestic violence is caused by women's behaviour, saying it occurs because women deserved it.

Domestic violence also occurs within gay and lesbian relationships (Vickers 1996). Estimating the prevalence of violence among these couples is very difficult since gays and lesbians face even greater obstacles to disclosure than other victims.

Family Violence

Aboriginal and Torres Strait Islander communities often prefer the term *family violence* to *domestic violence*. They argue that family violence better reflects the extended nature of Indigenous families and the varied forms of violence (including child sexual abuse). The term is also used to distinguish a preference for holistic, community-based solutions, not those directed simply at men's abuse of female partners (Blagg 1999). Family violence may include all sorts of relatives; violence committed by groups or individuals upon groups or individuals; physical, psychological, emotional, social, economic or sexual abuse (some definitions also include financial abuse); and it may occur in rural, remote or urban communities (Memmott et al 2001, p 1). Violence against women and children is extremely common in some Indigenous communities. Some Aboriginal women have been speaking out about family violence for many years, but it is only recently that specific responses have been developed. Indigenous communities stress that family violence must be seen within the context of the ongoing effects of colonisation on Indigenous Australians. In many communities this includes the need to address high levels of alcohol consumption.

Elder Abuse

Elder abuse (or abuse of the aged) occurs mainly at the hands of family members (often adult children or spouses) or other carers within the home or in a residential care setting. It is difficult to detect and is no doubt under-counted. The victim may not have the opportunity or capacity to report the abuse to an independent person or agency and there may be powerful disincentives to disclosure of the abuse such as fear of the consequences and the lack of alternative carers. Some research and programs define the *aged* as those 65 years or older, but definitions are not always clear or consistent. Australia lacks good measures of the prevalence of elder abuse, but studies suggest that around 4 to 5% of older people have been abused. Since women live longer than men, it is often older women who live alone, with other relatives or in residential care, and thus they are susceptible to abuse.

Risk factors for abuse include isolation, ongoing family conflict, physical, emotional or financial dependency, and lack of services. Research on elder abuse has focused mainly on physical or emotional abuse or neglect. In many cases, elder abuse may be the continuation of long term domestic violence (James & Graycar 2000). The abuse of mothers by their teenaged or adult sons is beginning to be recognised as common and overlaps with elder abuse. Researchers also have begun to recognise economic abuse of the aged including fraud, often at the hands of relatives.

Child Abuse

Child abuse may include physical abuse, sexual abuse, emotional abuse, neglect, child prostitution, and child pornography. In Australia, child prostitution and child pornography are likely to be uncommon within the home, but may affect some children who are homeless. Child abuse and domestic violence may overlap, and domestic violence witnessed by children may have negative effects independently of the abuse directed at the child. In some States, witnessing domestic violence is recognised as emotional abuse.

There are no adequate statistics on the incidence or prevalence of child abuse in Australia. Data are collected for notifications (or *reported* cases), but it is impossible to determine what proportion of cases are reported or whether patterns in the reported cases reflect patterns in the wider population of child abuse cases. Definitions of abuse and mandatory reporting requirements differ across Australia. Typically teachers and health professionals must report, but some schemes include counsellors, social workers, or childcare workers. These differences probably account for the large variations between States and Territories in recorded abuse. For instance, in 1999-00 emotional abuse made up 43% of substantiated notifications in Victoria but only 5% in Tasmania. Sexual abuse accounted for 29% of substantiated cases in New South Wales but only 6% in Queensland. The statistics summarised in Table 9.1 need to be interpreted with care, but they offer some insight into the size of the problem.

Table 9.1 *Child Abuse Notifications for Australia, 1999-2000*

Total notifications (reports)	107,134
Substantiated	24,732
Rates per 1,000 children ranged from 0.7 in Tasmania to 6.2 in Victoria.	
Children less than one year old had the highest rates in all jurisdictions except Tasmania.	
Indigenous children were over-represented in all States and Territories except Tasmania.	
Victims of sexual assaults were three times more likely to be girls than boys.	
Those responsible for the abuse were most commonly "natural" parents.	

Note: Notifications are reports received by the relevant agencies. Not all notifications are investigated. Substantiated cases are those cases where there are reasonable grounds to believe that a child has been or is likely to be abused or neglected.

Source: Australian Institute of Health & Welfare 2001

Indigenous children were over-represented in all categories of notified child abuse, and their numbers were especially high in the neglect category. This over-representation is explained by "the inter-generational effects of previous separations from family and culture, poor socio-economic status, and systemic racism in the broader society" (HREOC 1997, p 432).

Over the past decade the role of governments and institutions in the systemic abuse of children has been officially recognised. Systems abuse arises where organisations or systems fail to adequately protect children within the family, or where they assume responsibility for children outside the family home but fail to provide adequate care. Examples of systems abuse include the secondary abuse suffered by the children of prisoners (Cashmore, Dolby & Brennan 1994, p 5), the detention of the children of refugees and asylum seekers, and the physical and sexual abuse of children while in the care of churches.

THINKING THEORETICALLY ABOUT CRIMES IN THE HOME

Theories of crime in the home differ fundamentally in what they understand the problem to be and how to explain it. Is crime in the home a single phenomenon? Can one theory account for the range of behaviours that might be included in the category crime in the home? Should we look for explanations at the individual, family, or societal level; or do we need a multi-dimensional approach? Different theorists offer different answers to theoretical questions about crime in the home as they do for explaining crime in other domains. However, most theoretical work on crime in the home focuses on violence and related forms of abuse, rather than other behaviours.

Early theories of violence in the home were crude, individualistic, and victim blaming. For instance, psychiatrist John Gayford (1979) proposed that domestic violence could be explained by female masochism, suggesting that women "asked for it" and that some women enjoyed it. His work did not stand up to critical assessment. Some contemporary theorists view violence in the home as irrational or pathological, arising from mental illness, personality disorders, or drug abuse. These factors may be relevant in some cases, but they do not explain the fact that violence is relatively common, that it is mainly men rather than women who resort to violence, and that violence may occur in the absence of those factors. They also fail to explain why some men use violence within their families but not in other contexts. Nonetheless, individualistic explanations continue to have influence. For instance, feminist psychiatrists and defence lawyers introduced the Battered Woman Syndrome (BWS) to describe the effects of abuse on some women. Unfortunately, in some instances, BWS has been misinterpreted and used to focus unduly on women's psychological characteristics rather than on the violence they have faced and the limited choices available to them (Sheehy, Stubbs & Tolmie 1992).

Sociological theories focus on the family as a social institution but vary in the degree to which they recognise a broader social context. Many feminist approaches are also sociological, but focus more explicitly on gender relations in the family. Sociological theories include general systems theory, resource theory, and many others.

General systems theory focuses on family dynamics as offering the potential for conflict. *Resource theory* sees violence as a means of establishing dominance in a family in the absence of other resources. For *exchange theorists*, violence arises when the benefits outweigh the costs. *Theories of a subculture of violence* emphasise the values and norms that promote violence (Gelles 1993). How violence is transmitted from one generation to the next has been a key question for such researchers. Evidence suggests that some children exposed to violence in their families may use violence when they form their own intimate relationships or families. However, many people who have been exposed to violence are not violent, and conversely not all of those who use violence in their homes were exposed to violence as children. Other sociological theories analyse violence in the home as arising from stress related to poverty, unemployment or other forms of disadvantage. Elder abuse and child abuse are often understood as arising from the demands and stresses placed on caregivers. These factors may be significant in some cases, but violence in the home is not limited to the disadvantaged. Nor does this approach explain the gendered patterns of victimisation and offending.

Feminist theories of violence in the home have made an important contribution to understanding homicide, domestic violence, and sexual assault. As the overlap between domestic violence, child abuse, and elder abuse is explored, feminist approaches now include analyses of offending by both women and men.

There is no one feminist approach. However, feminist theorists tend to share a commitment to social change and an understanding of society as arranged in and through hierarchies based on gender. They have drawn attention to social inequalities that limit women's opportunities for full participation in the community. Limited access to paid work, education, and childcare may continue to make women vulnerable to violence in the home. Many feminist theorists also analyse the relationship of gender to class and race.

Feminist theorists have challenged gender-neutral accounts of violence in the home and research that depicts individual violence acts without a consideration of the meaning or context of the violence. Violence in the home is not irrational or meaningless; rather, it is used to exercise power and control over others (see below, Figure 9.1, the "Power and Control Wheel"). Aspects of the wider culture, such as traditions, rituals, stories, and commonsense assumptions, give meaning to acts of violence in the home and sometimes may even authorise or endorse such violence. For instance, consider the common sayings "spare the rod and spoil the child", "a man's home is his castle" or "boys will be boys". Research also suggests that making women safe in their homes is crucial to ensuring that children are safe.

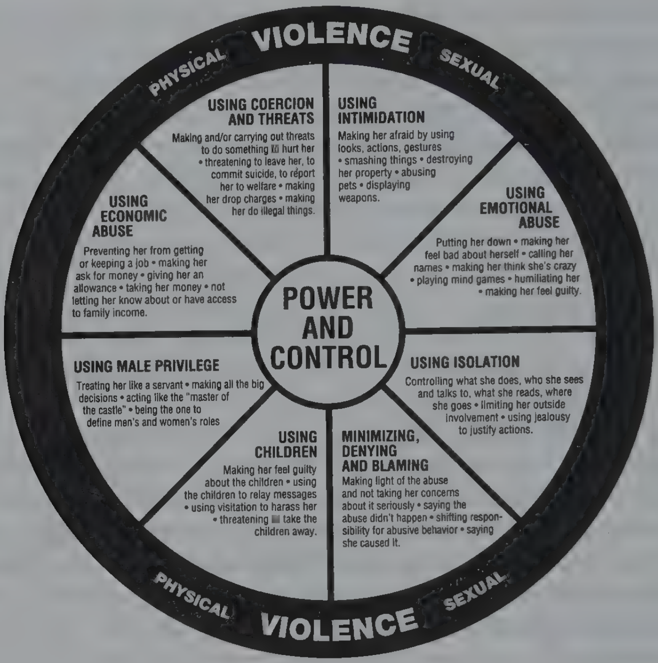
PHYSICAL
VIOLENCE
SEXUAL
USING COERCION AND THREATS
Making and/or carrying out threats to do something to hurt her • threatening to leave her, to commit suicide, to report her to welfare • making her drop charges • making her do illegal things.
USING INTIMIDATION
Making her afraid by using looks, actions, gestures • smashing things • destroying her property • abusing pets • displaying weapons.
USING ECONOMIC ABUSE
Preventing her from getting or keeping a job • making her ask for money • giving her an allowance • taking her money • not letting her know about or have access to family income.
USING EMOTIONAL ABUSE
Putting her down • making her feel bad about herself • calling her names • making her think she's crazy • playing mind games • humiliating her • making her feel guilty.
POWER AND CONTROL
USING MALE PRIVILEGE
Treating her like a servant • making all the big decisions • acting like the "master of the castle" • being the one to define men's and women's roles
USING ISOLATION
Controlling what she does, who she sees and talks to, what she reads, where she goes • limiting her outside involvement • using jealousy to justify actions.
USING CHILDREN
Making her feel guilty about the children • using the children to relay messages • using visitation to harass her • threatening to take the children away.
MINIMIZING, DENYING AND BLAMING
Making light of the abuse and not taking her concerns about it seriously • saying the abuse didn't happen • shifting responsibility for abusive behavior • saying she caused it.
PHYSICAL
VIOLENCE
SEXUAL

Figure 9.1 *Power and Control Wheel*
Source: www.duluth-model.org/diappce.html

Indigenous writers differ in the extent to which they accept a feminist framework as helpful. Most Indigenous writers insist that violence in Indigenous communities must be understood with reference to the damaging impact of colonisation and ongoing racism.

Increasingly, violence in the home is being analysed from a human rights perspective. Research shows that throughout the world, violence in the home constitutes a major cause of death and injury to women and children; it seriously compromises women's health, their labour force participation, and their capacity to engage freely in society. United Nations reports recognise that violence against women is fundamentally related to the social, cultural, and economic status of women. Within this framework the responsibility for violence against women in the home rests with governments, communities, and individuals. Where women are defined as the property of men, have few legal rights, little autonomy, and little or no independent access to financial or other resources, they may be especially vulnerable to violence (Charlesworth & Chinkin 1994).

RESPONDING TO CRIMES IN THE HOME

The general criminal laws of each State and Territory have provisions that deal with homicide and other forms of violence, and those provisions are supposed to apply equally, at least in theory, in both the home and public places. Specific legislation providing for protection orders (also called restraining orders or apprehended violence orders) exists in each jurisdiction and is aimed at preventing domestic violence. In some jurisdictions, these orders are broadly available and include same-sex relationships and, in some circumstances, elder abuse and child abuse. There are no specific legislative provisions concerning elder abuse.

Policy responses to domestic violence have relied largely on the criminal law, protection orders and the provision of emergency housing, and other support through the Women's Refuge Movement. Many States are now experimenting with perpetrator programs. Mediation is generally seen as inappropriate for domestic violence matters due to the power imbalance between the parties. Debate continues as to whether restorative justice offers a safe and effective option (Strang & Braithwaite 2002).

Elder abuse tends to be dealt with through health or community services sectors and public education, although this varies across Australia. Strong disincentives to reporting suggest that only a fraction of all cases comes to the attention of the criminal justice system. Elder abuse in residential care is typically managed through regulatory mechanisms, and funding may be withdrawn from those homes that repeatedly fail to meet standards (James & Graycar 2000, p 64).

All States and Territories have child protection legislation in addition to criminal law, but these vary considerably. Legal responses to child abuse depend on the type of abuse. Physical abuse is typically not prosecuted unless it is very serious. By contrast, sexual abuse is more likely to be prosecuted (although evidentiary problems and difficulties associated with child witnesses mean that conviction rates are low) (Parkinson 2000). Some jurisdictions have introduced legislation to limit the use of corporal punishment against children. However, that issue continues to be controversial. Non-legal responses to child abuse include early intervention programs to support families and parenting programs.

Some Indigenous communities have begun to use innovative responses to family violence, such as community healing and circle sentencing, where community elders determine appropriate sanctions. Culturally appropriate programs specific to different forms of abuse are also being trialed and developed. For many communities, Indigenous control and self-determination are seen as fundamental to developing effective responses to violence.

CONCLUSION

Responses to crimes in the home across Australia are not uniform. There are marked differences both within and between jurisdictions in responses to different forms of crime within the home. Criminal laws are relied on to deal with domestic violence and some forms of child abuse but less so for elder abuse. These differences may be justified in that they reflect the specificities of different forms of abuse or the needs of a particular setting. However, they also may reflect the limitations of the policy process. Criminal justice policy is often driven by political concerns rather than research and careful consideration. We need more careful evaluation of programs and policies to ensure that they are well founded and effective.

While the failure of the criminal justice system to take crimes in the home seriously cannot be excused, we also should be sceptical about the possibilities of law to prevent or remedy crimes in the home. Theorists differ in their analysis of crimes in the home, but most point to the importance of inequality or marginality as key factors underlying patterns of violence. The criminal justice system and the law more generally offer few prospects for changing such factors. Safety within the home cannot be secured through the resort to law alone. Rather it requires broader social change to make crime in the home genuinely unacceptable.

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QUESTIONS

1. There is debate about the terms domestic violence, wife abuse, spouse abuse, wife battering, partner abuse and family violence. What other terms might be used? What are the benefits and limitations of each term? Do the different terms reflect different theoretical assumptions about abuse?
2. The way in which a social problem is constructed and understood has important implications for proposed policy outcomes. Compare and contrast psychological theories of domestic violence with those that use a feminist approach. What policy recommendations do you see as consistent with each approach?
3. Crime prevention advice often focuses on "stranger danger" and situational crime prevention. What are the shortcomings of such approaches for the prevention of violence in the home? What approach to crime prevention do you think would be most effective in dealing with violence in the home?
4. What are the strengths and weaknesses of criminal justice responses to violence to in the home? Can you think of any promising alternatives?
5. Institutional or community-based residential settings for the aged, the disabled, or young people in State care are often described as "homes". However, these same settings too often have been the site of abuse and disadvantage. What are some of the factors that make residents of those "homes" vulnerable to crime?
6. Do you think there are common factors underpinning domestic violence, child abuse, and elder abuse? If so, what are they? Is a single theory likely to be adequate to explain each of these types of crime in the home?
7. Some Indigenous communities prefer community-based healing approaches to family violence. What are the characteristics of these approaches? How do they differ from responses typically adopted in the non-indigenous community?

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USEFUL WEBSITES

www.austdvclearinghouse.unsw.edu.au/
Australian Domestic & Family Violence Clearinghouse

www.dvirc.org.au/
Domestic Violence & Incest Resource Centre (Victoria)

www.aifs.gov.au/nch
National Child Protection Clearinghouse

www.padv.dpmc.gov.au/index.htm
Partnerships Against Domestic Violence

Note

[1] Babyfarming, which occurred into the early 20th century, refers to carers taking in babies, usually for payment, and often more than they could adequately care for. Deaths of the babies due to neglect or murder were typically not scrutinised by authorities (Allen 1990, p 34).

CHAPTER 10

CRIME IN THE DIGITAL AGE

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KEY WORDS

- computer crime
- cyber crime
- information security
- computer security
- encryption
- regulation of cyberspace

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INTRODUCTION

At the beginning of the 21st century, the convergence of computing and communications technologies has altered the way in which industrialised societies function. It has created untold benefits for education, delivery of health services, recreation, and commerce, and changed considerably the nature of modern workplaces and patterns of employment. At the same time, it has created unprecedented opportunities for crime (see Grabosky & Smith 1998; Grabosky, Smith & Dempsey 2001). Identifying these vulnerabilities, and mobilising appropriate countermeasures, will be one of the great challenges in the new millennium.

Much computer-related crime lies beyond the capacity of contemporary law enforcement and regulatory agencies alone to control, and security in cyberspace will depend on the efforts of many institutions, coupled with self-help by potential victims. The ideal configuration will differ, depending upon the activity, but it is likely to entail a mix of law enforcement, technological, and market responses. Because cyberspace knows no boundaries and computer crime often crosses national frontiers, effective countermeasures will require a substantial degree of international co-operation.

We begin by discussing 12 of the latest forms of *digital crime*, that is, crime that involves information systems as instruments or as targets of illegality. The term *digital* is used because information systems operate by reducing data to streams of "1s" and "0s". Almost every type of information can thus be transmitted across telecommunications networks, which are connected by wires or radio communication.

VARIETIES OF DIGITAL CRIME

There is a diversity of crimes committed with or against information systems. Some of these are not new in substance; only the medium is new. Others represent entirely new forms of illegality altogether. These forms of crime are not mutually exclusive, nor is the following list exhaustive.

Theft of Telecommunications Services

The "phone phreakers" of three decades ago set a precedent for what has become a major criminal industry. The market for stolen communications services is now large. Some people seek to avoid or to obtain a discount on the cost of a telephone call whilst others, such as illegal immigrants, are unable to acquire legitimate information services without disclosing their identity and their status. There are others still who use information services to conduct illicit business with less risk of detection. All pose a significant challenge to carriers, service providers, and to the general public, who often bear the financial burden of fraud.

The methods of stealing telecommunications services are diverse: they include the "cloning" of cellular phones and the counterfeiting of telephone cards. They also include gaining unauthorised access to an organisation's telephone switchboard (PBX). By gaining access to a PBX, individuals or criminal organisations can obtain access to dial-in/dial-out circuits and then make their own calls or sell call time to third parties (Gold 1999). Offenders sometimes gain access to the switchboard by impersonating a technician, by fraudulently obtaining an employee's access code, or by using software available on the Internet. Some sophisticated offenders loop between PBX systems to evade detection. Additional forms of service theft include illegally capturing "calling card" details and selling the services to third parties (while charging the calls to the card's owner) and counterfeiting or reprogramming stored value telephone cards.

Over a decade ago in 1990, security failures at one major telecommunications carrier in England cost the equivalent of AU$900million, while more recently it was estimated that up to 5% of total industry turnover has been lost to fraud (Schieck 1995, pp 2-5; Newman 1998). Costs to individual subscribers can also be significant. In one case, computer hackers in the United States obtained illegal access to Scotland Yard's telephone network and made AU$1,800,000 worth of international calls for which Scotland Yard was responsible (Tendler & Nuttall 1996).

Dialogue Box 10.1

Theft of Telecommunications Services

In Victoria, two English language students from China were convicted of defrauding Telecom (soon to become Telstra) of approximately $24,000. In 1992 they illegally connected an electronic device to wires within Telecom "pits" adjacent to public telephone booths, which caused nine separate 0055 information numbers to ring repeatedly. For every call made, Telecom received 35% of the call charge while the service provider received the remaining 65%, of which a proportion was paid to the offenders as information providers. By causing a constant stream of calls to be made to the numbers, the offenders were able to deflect some $167,000 of Telecom's money to the service providers, who then paid part of this into various bank accounts opened by the offenders in false names (*R v Liang and Li* [1995] 82 A Crim R 39).

Communications in Criminal Conspiracies

Just as legitimate organisations in the private and public sectors rely upon information systems for communications and record keeping, so too are the activities of criminal organisations enhanced by technology. Telecommunications equipment is used to facilitate organised drug trafficking, gambling, prostitution, money laundering, child pornography, and trade in weapons (in those jurisdictions where such activities are illegal). Members of the Al Qaeda terrorist network used email and the Web to communicate with each other. Encryption technology may place criminal communications beyond the reach of law enforcement.

The use of computer networks to produce and distribute child pornography is the subject of increasing attention. These materials can be imported across national borders at the speed of light (Grant, David & Grabosky 1997). The more overt manifestations of Internet child pornography entail a modest degree of organisation, as required by the infrastructure of Internet chat rooms, but the activity appears largely confined to individuals.

By contrast, some of the less publicly visible traffic in child pornography requires greater organisation. From what is known from police investigations, a number of networks have been established which extend across national borders, use sophisticated technologies of concealment, and have a significant degree of coordination.

Dialogue Box 10.2

Communications in Criminal Conspiracies

In 1998, the largest global seizure of paedophile material took place in "Operation Cathedral". This involved police in 15 countries who uncovered the activities of the W0nderland Club, an international network with members in Europe, North America, and Australia who used the Internet to download and exchange child pornography including real-time video images. The Club used a secure network with regularly changed passwords and encrypted content. In Europe alone, over 750,000 images were recovered from computers, along with over 750 CDs and 1,300 videos and 3,400 floppy disks. One member of the Club cooperated with police, and this led to approximately 100 arrests around the world in September 1998 (Australasian Centre for Policing Research 2000, "The Virtual Horizon: Meeting the Law Enforcement Challenges", Scoping Paper, Australasian Centre for Policing Research, Adelaide, p 126).

Information Piracy

Digital technology permits perfect reproduction and easy dissemination of print, graphics, sound, and multimedia combinations. It is now possible, for example, to download music from the latest compact disks and feature films from the Internet. The temptation to reproduce copyright material for personal use, for sale at a lower price, or indeed, for free distribution, has proven irresistible to many. According to the *Straits Times* (8 November 1999), a copy of the James Bond film "The World is Not Enough", was available free on the Internet before its official release. When creators of a work, in whatever medium, are unable to profit from their creations, there can be a chilling effect on creative effort generally, in addition to financial loss.

Each year, it has been estimated that losses of between AU$30 and $34 billion are sustained by industry because of copyright infringement (United States, Information Infrastructure Task Force 1995, p 131). The Software Publishers Association has estimated that $15 billion worth of software was lost to piracy in 1993 with $4 billion of that being stolen from the Internet (Meyer & Underwood 1994). Ryan (1998) puts the cost of foreign piracy to American industry at more than AU$20 billion in 1996, including $3.6 billion in the film industry, $2.4 billion in music, $7.6 billion in business application software, and $1.3 billion in book publishing. As broadband services continue to become available with text, graphics, sound, and video information being freely accessible via cable modems, the potential for copyright infringement involving such works will be enhanced enormously.

Identity-Related Crime

A frequently used strategy to commit fraud is the creation of false documents to misrepresent one's identity. Once a convincing identity has been established, it is then possible to steal money or otherwise to act illegally and then to evade detection, investigation, and arrest. In the past, forging documents was a highly skilled task that few could do well. With the advent of digital technologies, however, it is much easier to scan an official document electronically, alter the image as it appears on a screen, and print out a counterfeit version using a high-quality laser colour printer.

These technologies are increasingly used to launder money and to evade taxes, to obtain personal bank loans, and to deal in stolen motor vehicles. Counterfeit documents are created by a single person to support multiple identities, each being used once only for a specific illegal enterprise, and then discarded. The objective is to obtain a benefit without leaving evidence that would connect the offender to the crime.

Dialogue Box 10.3

Identity-Related Crime

In Victoria, between August 1995 and March 1996, an offender used desktop publishing equipment to create 41 birth certificates, 41 student identification cards, some containing photographs, each in separate names, and a counterfeit driver's licence. These were used to open 42 separate bank accounts throughout the Melbourne metropolitan region, to pay cheques into accounts as wages and make immediate withdrawals before they had cleared, to register a business name, to obtain sales tax refunds, and to defraud various retailers. The offender was convicted of both State and federal charges and sentenced to five years' imprisonment with a non-parole period of three years. He was also ordered to pay compensation of $41,300 and reparation to the Commonwealth of $458,383 (*R v Zehir* (1998) 104 A Crim R 109 (Court of Appeal, Supreme Court of Victoria, 1 December 1998)).

Dissemination of Offensive Materials

Content considered to be objectionable exists in abundance in cyberspace. This includes, among much else, sexually explicit materials (including child pornography, as we have seen above), racist propaganda, and instructions for the fabrication of incendiary and explosive devices. In northwest Victoria in July 1999, a 17-year old boy died and his two friends were injured when a bomb, which they constructed from a recipe discovered on the Internet, exploded (Butcher 2001).

The rich diversity in thresholds of tolerance around the world, combined with the global reach of telecommunications, make this a particularly difficult regulatory challenge. For example, materials offensive to religious leaders in Iran may fail to raise an eyebrow elsewhere.

Dialogue Box 10.4

Dissemination of Offensive Materials

A student at the University of Michigan composed a sadistic fantasy story and sent it out over the Internet. He used the name of a fellow student as the story's victim, and was charged with communicating a threat. Charges were later dropped (*US v Baker*, WL388472 (ED Mich) No CR 95-80106 (1995)). A university lecturer in Western Australia was awarded substantial damages after having been the subject of unflattering, defamatory comment on the Internet (*Rindos v Hardwick*, unreported, Supreme Court of Western Australia, 31 March 1994).

In November 2000, a French judge ordered the United States-based Yahoo! to block Web surfers in France from an auction where Nazi memorabilia was sold. He gave Yahoo! three months to find a way to prevent users based in France from accessing pages on auctions that feature Nazi-related objects, such as swastika-emblazoned flags and daggers. In January 2001, the company announced plans to ban hate-related goods, including Nazi memorabilia, from its US commerce sites.

Cyber-stalking

Telecommunications systems are used for harassing, threatening or intrusive communications, from the traditional obscene telephone call to its contemporary manifestation in "cyber-stalking", in which persistent messages are sent to victims.

One man stole nude photographs of his former girlfriend and her new boyfriend and posted them on the Internet, along with her name, address, and telephone number. The couple, residents of Kenosha, Wisconsin, received phone calls and emails from strangers as far away as Denmark, who said they had seen the photos on the Internet. Investigations also revealed that the offender was recording his former girlfriend's movements and compiling information about her family (Spice & Sink 1999).

An honours graduate from the University of San Diego used email to harass five female students for more than a year in 1998. He bought information on the Internet about the women using a professor's credit card and then sent them hundreds of violent and threatening messages, sometimes four or five a day, including death threats, graphic sexual descriptions, and references to their daily activities. He said he did this because he thought the women were laughing at him and causing others to ridicule him. In fact, the victims had never met him. He pleaded guilty to charges, which carried a maximum penalty of six years' imprisonment (United States Department of Justice 1999).

Dialogue Box 10.5

Cyber-stalking

A rejected suitor posted invitations on the Internet under the name of a 28-year old woman, the would-be object of his affections, which said she had fantasies of rape and gang rape. He then communicated via email to men who replied to the solicitations; he supplied them personal information about the woman, including her address, phone number, details of her physical appearance, and how to bypass her home security system. These men turned up at her home on six different occasions, and she received many obscene phone calls. While the woman was not physically assaulted, she would not answer the phone, was afraid to leave her home, and lost her job. The offender was sentenced to prison for six years (Miller, G & Maharaj, D 1999, "N Hollywood man charged in 1st cyber-stalking case", *Los Angeles Times*, 22 January 1999).

Digital Extortion

Computer networks may also be used for criminal extortion (extortion is a demand, usually for money, accompanied by the threat of harm if the victim does not comply). The *Sunday Times* (London) reported in 1996, that over 40 financial institutions in the United Kingdom and the United States had been attacked electronically during the previous three years. In England, financial institutions paid significant amounts to sophisticated computer criminals who threatened to wipe out their computer systems (*Sunday Times*, 2 June 1996). The article cited four incidents between 1993 and 1995 in which a total of £42.5 million were paid by senior executives, who were convinced of the extortionists' capacity to crash their computer systems (Denning 1999, pp 233-234).

Dialogue Box 10.6

Digital Extortion

One case, which illustrates the transnational reach of extortionists, involved German hackers who compromised an Internet Service Provider (ISP) in South Florida, disabling eight of the ISP's ten servers. The offenders obtained personal information and credit card details of 10,000 subscribers, and, communicating via electronic mail through one of the compromised accounts, demanded that US$30,000 be delivered to a mail drop in Germany. Co-operation between United States and German authorities resulted in the arrest of the extortionists (Bauer, J 1998, Testimony to the Subcommittee on technology, terrorism and government information, Committee on the Judiciary, United States Senate, 20 May 1998, www.securitymanagement.com/library/bauer.html, visited 17 April 2002).

Electronic Money Laundering and Tax Evasion

For some time, electronic funds transfers have assisted in concealing and in moving the proceeds of crime. Emerging technologies will enhance these efforts. Legitimately derived income may also be more easily concealed from taxation authorities. At present, the movement of funds electronically is closely supervised by government regulators. However, regulatory controls can be avoided by computer technologies, for example, by making multiple transactions just beneath the cash transaction reporting threshold. Some forms of electronic cash for use on the Internet also bypass traditional controls on the issuing and movement of currency. Traditional underground banks, which have flourished in Asian countries for centuries, will enjoy even greater capacity through the use of telecommunications.

New technologies that support electronic commerce may result in traditional countermeasures against money laundering and tax evasion becoming obsolete. For example, in selling illegal drugs, a dealer in the future may receive stored value on a "smart-card", which could then be downloaded anonymously to an account in a financial institution in an overseas country that protects the privacy of its banking clients (Wahlert 1996).

Dialogue Box 10.7

Electronic Money Laundering and Tax Evasion
A report of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances notes that most of the US$1 billion laundered daily goes through banks in financial havens. About 80% of this amount has no physical presence, that is, no employees, no cashiers, and no face-to-face dealings. E-cash is an untraceable online payments system that uses a "blind signature protocol". Designed to be as foolproof and anonymous as cash, it is currently being used by leading banks in Europe and Australia (Shepherd, B 1998, *E-Commerce — The Impact Upon Policing*, August, New South Wales Police Service, Sydney).

Electronic Vandalism and Terrorism

Western industrial society is dependent upon complex data processing and telecommunications systems. Damage to, or interference with, any of these systems can lead to catastrophic consequences. Whether motivated by curiosity or vindictiveness, electronic intruders cause inconvenience at best, and they have the potential for inflicting massive harm (Schwartau 1994; Hundley & Anderson 1995).

While this potential has yet to be fully realised, a number of individuals and protest groups have hacked into the official web pages of various governmental and commercial organisations (Rathmell 1997; see also www.2600.com/hacked_pages, visited 4 January 2000). Early in 1999, an organised hacking incident was apparently directed at a server that hosted the Internet domain for East Timor, which at the time was seeking its independence from Indonesia (Creed 1999). The emergency landing in China of a United States Navy reconnaissance aircraft after a midair collision with a Chinese interceptor in April 2001 led to a spate of attacks by private citizens of both countries against the websites in each. The attacks involved either denial of service or electronic "graffiti", where websites were defaced with protest messages.

Defence planners around the world are investing substantially in information warfare, that is, methods of disrupting the information technology infrastructure of defence systems (Stix 1995; see also the Institute for the Advanced Study of Information Warfare website, www.psycom.net/ iwar.1.html, visited 8 March 2002). For example, attempts were made to disrupt the computer systems of the North Atlantic Treaty Organisation during the 1999 bombing of Belgrade (British Broadcasting Corporation 1999).

Dialogue Box 10.8

Electronic Vandalism and Terrorism

Computerised systems maintained by health care authorities have been targeted by electronic vandals and terrorists. In 1989, an AIDS research laboratory at the University of Bologna, Italy, lost ten years of irreplaceable data through computer vandalism, while in another case a hacker copied a computer file containing HIV blood test results for use in subsequent blackmail attempts. In Luxembourg, an individual gained access to a hospital's computer system resulting in an operation on a ten-year old boy being delayed for six days while the hospital's computer network was rebuilt. In another incident, a nurse working in a hospital modified records relating to patients' prescriptions, scheduling of X-Rays, and recommended dates for discharge from hospital (Smith, R 1998, "The regulation of telemedicine" in R Smith (ed), *Health Care, Crime and Regulatory Control*, Hawkins Press, Sydney, pp 190-203).

Electronic Sales and Investment Fraud

As electronic commerce becomes more prevalent, the application of digital technology to fraudulent business endeavours will also increase.

The use of the telephone for fraudulent sales pitches, deceptive charitable solicitations, or bogus investment overtures is increasingly common. Cyberspace now abounds with a wide variety of investment opportunities, from traditional securities such as stocks and bonds, to more exotic opportunities such as coconut farming, the sale and leaseback of automated teller machines, and worldwide telephone lotteries (Cella & Stark 1997, pp 837-844). The digital age has brought unprecedented opportunities for misinformation. Fraudsters now enjoy direct access to millions of prospective victims around the world, instantaneously and at minimal cost.

Classic pyramid schemes and "Exciting, Low-Risk Investment Opportunities" are not uncommon. The technology of the World Wide Web is ideally suited to investment solicitations. Staff working for the United States' Securities and Exchange Commission (SEC) say that "at very little cost, and from the privacy of a basement office or living room, the fraudster can produce a home page that looks better and more sophisticated than that of a Fortune 500 company" (Cella & Stark 1997, p 822).

Dialgue Box 10.9

Electronic Sales and Investment Fraud

A 24-year old man living in a Melbourne suburb manipulated the share price of an American company by posting information on the Internet and sending email messages around the globe that contained false and misleading information about the company. In May 1999, he posted messages on Internet Bulletin Boards in the United States and sent more than four million unsolicited email messages, colloquially referred to as spam, to recipients in the United States, Australia, and other parts of the world. The messages contained a statement that the share value of the company would increase from the then current price of US$0.33 to US$3.00, once pending patents were released by the company, and that the price would increase up to 900% within the next few months. The effect of the information was that the company's share price doubled, with trading volume increasing by more than ten times the previous month's average trading volume. The offender had purchased 65,500 shares in the company through a stock broking firm in Canada several days before he transmitted the information. He sold the shares on the first trading day after the transmission of the information and realised a profit of approximately AU$17,000.

The Australian Securities and Investments Commission prosecuted the offender for distributing false and misleading information with the intention of inducing investors to purchase the company's stock. He pleaded guilty and was ordered to serve three months' imprisonment and to be of good behaviour for a further 21 months (*Australian Securities and Investments Commission v Steven George Hourmouzis*, unreported, County Court of Victoria, 30 October 2000, Stott J).

Illegal Interception of Digital Information

New information technologies also provide opportunities for electronic eavesdropping. This ranges from surveillance of an unfaithful spouse to new forms of political and industrial espionage. Technological developments create new vulnerabilities. In New York, for example, two individuals used a sophisticated scanning device to pick up 80,000 cellular telephone numbers from motorists who drove past their Brooklyn apartment. The two were arrested, but had they been free to use this information, they could have created cloned mobile telephones, which could have been used to make millions of dollars in illegal calls (*West Australian*, 9 July 1996, p 47).

The electromagnetic signals emitted by a computer can be intercepted, and cables can act as broadcast antennas. It has been reported that the notorious American hacker Kevin Poulsen was able to gain access to law enforcement and national security wiretap data before his arrest in 1991 (Littman 1997). In 1995, hackers employed by a criminal organisation attacked the communications system of the Amsterdam Police. The hackers succeeded in gaining police operational intelligence and in disrupting police communications (Rathmell 1997).

Dialogue Box 10.10

Illegal Interception of Digital Information

A company advertised "free" erotic photographs on the Internet. In order to see the images, the user was required to download software which, once installed, took control of the user's modem, cut off the local Internet Service Provider, and dialled a number in the former Soviet Republic of Moldova in Eastern Europe. The line remained open until the computer was turned off, resulting in the user incurring large international telephone charges, which were shared between the fraudster and the Moldovian telecommunications company. The fraud was detected through regular surveillance of customers' telephone accounts and the Federal Trade Commission was able to obtain an order requiring the defendants to place US$1 million in an escrow account pending resolution of the case (*Federal Trade Commission v Audiotex Connection Inc* EDNY Filed 13 February 1997).

Electronic Funds Transfer Crime

The proliferation of electronic funds transfer systems will increase new opportunities for crime. Existing systems such as Automated Teller Machines (ATMs) and Electronic Funds Transfer at Point of Sale (EFTPOS) technologies have already been the targets of fraudulent activity; and the development of stored value cards or "smart cards", super smart cards and optical memory cards will invite some individuals to engage in electronic counterfeiting. Just as a telephone card can be reprogrammed, smart cards can be re-engineered. Credit card details can be captured and used by unauthorised persons. The transfer of funds from home between accounts and in payment of transactions will also create vulnerabilities in terms of theft and fraud. The widespread development of electronic money for use on the Internet will lead to further opportunities for crime.

Dialogue Box 10.11

Electronic Funds Transfer Crime

Between June and October 1994, a group of Russian computer hackers attempted to steal approximately US$10.7 million from various Citibank customers' accounts in the United States by manipulating its computerised funds transfer system. One offender, Vladimir L Levin, was working in a Russian firm, and gained access over 40 times to Citibank's funds transfer system using a personal computer and stolen passwords and account identification numbers. Using a computer terminal in his employer's office in St Petersburg, he authorised transfers of funds from Citibank's head office in New Jersey to accounts, which he and his co-conspirators held in California, Finland, Germany, the Netherlands, Switzerland, and Israel.

Levin was arrested at Stanstead Airport, in England in 1995, and after protracted legal proceedings that went to the House of Lords, he was extradited to stand trial before the Federal District Court in New York's Southern District. In 1998, he pleaded guilty to conspiracy to defraud and was sentenced to 36 months' imprisonment and to pay Citibank US$240,015 in restitution. Citibank was able to recover all but US$240,000 of the $10.7 million worth of illegally transferred funds. None of the bank's depositors lost money. The consequences for Citibank's business reputation were considerable (*R v Governor of Brixton Prison; Ex parte Levin* [1996] 3 WLR 657; *R v Governor of Brixton Prison; Ex parte Levin* [1998] 1 Cr App 22 (House of Lords, 19 June 1997)).

COMMON THEMES

Several themes are common across the diverse types of digital or computer crime: secrecy and anonymity, motives and opportunities, kinds of guardians, and cross-border problems.

Secrecy and Anonymity

Technologies can conceal the content of communications and disguise the identity of users. Technologies of encryption, for example, can limit access by law enforcement to communications carried out to commit a crime, or to the dissemination of objectionable materials (Denning 1999).

Technologies can also conceal a communicator's identity. Electronic impersonation ("spoofing") can be used to commit fraud, criminal conspiracy, harassment, and vandalism. Technologies of anonymity make it difficult to identify suspects (Froomkin 1995). Offenders can mask their identity on computer networks by means of "looping" or "weaving" through multiple sites across nation states. Anonymous re-mailers and encryption devices can shield offenders from the scrutiny of all but the most determined and technologically sophisticated regulatory and enforcement agencies. Some crimes do not result in detection or loss until some time after the event. Considerable time may elapse before the activation of a computer virus, or between the insertion of a "logic bomb" and its detonation. Finally, technology has greatly facilitated so-called identity-related economic crime in which offenders fabricate documents by using desktop publishing equipment to misrepresent their identity or make use of another's identity for illegitimate purposes (Smith 1999).

Motivations and Opportunities

With the diversity of digital crimes, there are diverse motives. Some are as old as human society, including greed, lust, revenge, and curiosity. Revenge in the modern era can also entail a political dimension. Criminal motivations, whether by individuals or organisations, are difficult to change. For this reason, we think that the most advantageous approaches to digital crime will focus on the reduction of opportunities and the enhancement of guardianship (Cohen & Felson 1979).

The most effective way of eliminating opportunities for digital crime is to pull the plug. This is of course unrealistic, because the affluent nations of the world are now highly dependent on information technology. For the poorer nations, information technology is probably a necessary path to economic development. Thus, the challenge lies in managing risk so as to achieve the maximum benefits that flow from new technologies, while minimising the costs. A merchant could scrutinise every credit card transaction to reduce the risk of fraud, but in the process drive away legitimate customers. At a higher level, nations around the world are in the process of forging policies on where to draw the line on such fundamental questions as the balance between the citizen's privacy and the imperatives of law enforcement, and freedom of expression versus the protection of certain cultural values.

Denning (1999) offers a comprehensive inventory of technologies for reducing opportunities for computer crime. She describes technologies of encryption and anonymity, which permit concealment of the content of communications, for example, a consumer's credit card details or a communicator's identity (for instance, not all participants in discussion groups on reproductive health wish to disclose their identities). Denning also outlines technologies of authentication, from basic passwords, to biometric devices such as fingerprint or voice recognition technology, and retinal imaging, which greatly enhance the difficulty of obtaining unauthorised access to information systems.

Kinds of Guardians

Guardianship against conventional crime involves preventive efforts by potential victims and members of the general public or commercial third parties, as well as the actions of law enforcement agencies. Technology can be put to the service of enhancing guardianship. Alarms can indicate when repeated login attempts fail because of incorrect passwords, or when access is sought outside normal working hours. Other anomaly detection devices can identify unusual patterns of system use, including atypical destination and duration of telephone calls, or unusual spending patterns using credit cards (Denning 1999).

Guardianship can also be enhanced by market forces. A market is currently emerging for Internet Service Providers specialising in content suitable for family consumption, guaranteed to be free of sex, violence, and vilification. Market forces may also generate second-order controlling influences. As large organisations begin to appreciate their vulnerability to electronic theft or vandalism, they may be expected to insure against potential losses. It is in the interests of insurance companies to require security precautions by their policyholders. Indeed, decisions to set and to price insurance may well depend upon security practices of prospective policyholders. Subcontractors may also be required to have strict information technology (IT) integrity programs in place as a condition of doing business. Virus detectors can identify and block malicious computer code, whilst blocking and filtering programs can screen out unwanted content. A rich variety of commercial software now exists with which to block access to certain sites (Venditto 1996).

Citizen concern about the availability of undesirable content has given rise to the private monitoring and surveillance of cyberspace. Among the more prominent organisations involved in such surveillance are the Simon Wiesenthal Center, whose "CyberWatch Hotline" (www.wiesenthal.com/taskforce/index.cfm, visited 8 March 2002) invites notification of anti-Semitic and racist material

Citizens can also complement activities taken by state agencies. An example of such public-private collaboration is the Netherlands Hotline for Child Pornography on Internet, an initiative of the Foundation for Dutch Internet Providers (NLIP), the Dutch National Criminal Intelligence Service (CRI), Internet users, and the National Bureau against Racism (LBR). Users who encounter child pornography originating in the Netherlands, identifiable by a domain name address ending in 'nl' are encouraged to report the site. The originator is warned about the posting, and asked to desist from further such activity. If the warning is ignored, then the hotline will forward any available information to the vice-squad of the local police. More information about the Netherlands hotline against child pornography on the Internet can be found at www.meldpunt.org/meldpunt-eng.htm (visited 8 March 2002).

Cross-Border Problems

A significant aspect of digital crime is its global reach. While international offending is not a uniquely modern phenomenon, the global nature of cyberspace enhances the ability of offenders to commit crimes in one country that will affect individuals in many other countries. This poses great challenges for the detection, investigation, and prosecution of offenders.

Two problems arise in prosecuting telecommunications offences that cross national borders. First, is the determination of *where* the offence occurred in order to decide which laws to apply. If an online financial newsletter, originating in the Bahamas, contains fraudulent speculation about the prospects of a company whose shares are traded on the Australian Stock Exchange, where has the offence occurred? The second problem lies in obtaining evidence and in locating the offender(s). Both raise complex legal problems of jurisdiction and extradition (see Lanham, Weinberg, Brown & Ryan 1987).

Even if one can decide which law is applicable, further difficulties arise in applying the law. A resident of Chicago who falls victim to a telemarketing scam originating in Albania, for example, can expect little assistance from law enforcement agencies in either jurisdiction. As a result, regulation by individual nation states will be ineffective for these types of offences (Post 1995).

Cross-border law enforcement costs are also often prohibitive. The time, money, and uncertainty required by international investigations, and if successful, extradition proceedings, can be so high that attention is focused only on the most serious offending. Moreover, the co-operation across international boundaries requires a congruence of values and priorities; and despite prevailing trends towards globalisation, such mutual understanding is infrequent (see also Chapter 11).

Investigations are further complicated by the logistics of search and seizure during real time, the sheer volume of material within which incriminating evidence may be contained, and the encryption of information, which may then be entirely inaccessible, or accessible only after a massive application of decryption technology. Prosecuting crime across borders is difficult. Traditionally, the jurisdiction of courts was local. That is, courts could only entertain prosecutions for offences committed against local laws where there was a sufficient link between the offence and the jurisdiction in question. There is, however, always the possibility that legislatures will confer extraterritorial jurisdiction for some crimes, for example, sexual relations between Australians and children overseas who are under 16 years of age.

To the extent that international digital crime is amenable to international enforcement, it will require concerted international co-operation. But this will require a degree of consensus that is difficult to achieve except in cases such as child pornography or fraud on a scale that would destabilise financial markets. Even so, law enforcement and regulatory vacuums exist in some parts of the world, certainly in countries where the state has effectively collapsed. Even where state power does exist in full force, the corruption of individual regimes can impede international co-operation.

COUNTERING DIGITAL CRIME

The criminal justice system is not especially effective in controlling crime, and crime prevention requires the contribution of families, schools, and many other institutions of civil society. This holds true for digital crime and traditional forms of crime. What principles can we articulate to control computer crime?

Prevention

The homily that prevention is better than cure is nowhere more appropriate than in cyberspace. Just as one would be unwise to leave one's house unlocked when leaving for work or school in the morning, so too is it foolish to leave one's information systems accessible to unauthorised persons. Prevention takes a variety of forms, including risk analyses of information systems and the creation of effective policies and procedures to protect them from damage or misuse. Each workplace should have policies to guard against misuse of information systems by employees.

Self-Help

Another key principle in the prevention of digital crime is the need to raise awareness on the part of potential victims. Individuals and institutions should be made aware of the potential consequences of an attack on their information assets and of the precautionary measures that they should take.

Non-Governmental Resources

With diminishing state resources to control crime, it is desirable to enlist the private sector and community organisations in the prevention and detection of digital crime. Information security specialists can advise individual and organisational clients about risks and can recommend preventive measures. Passwords or biometric technologies of authentication, such as fingerprints or retinal images, can help to guard against unauthorised use. Virus checkers or intrusion detection software can protect against a hacker attack. Objectionable content can be addressed at the individual level by blocking and filtering software, which can prevent access to certain types of sites.

Law Enforcement

Law enforcement agencies must keep abreast of rapidly developing technologies, and this will require training in new methods of detection and investigation. As new technologies are exploited by cyberspace criminals, law enforcement cannot be left behind. This poses a significant challenge because the emerging trend is that skilled investigators are "poached" by the private sector. The collaboration of law enforcement with specialised expertise in the private sector will be a common feature in years to come. It will also be important for public and private sector managers to develop close ties with law enforcement, to report suspected illegality to them, as well to provide them with assistance when required. In these ways, the capacity of law enforcement will be enhanced.

International Co-operation

The global nature of cyberspace necessitates the development of new strategies to combat criminal activity that can originate from the other side of the world. To do this will require co-operation among and between many nations. Enlisting the assistance of overseas authorities is not an automatic process, and it often requires pre-existing agreements relating to formal mutual assistance in criminal matters. Nevertheless, there are numerous examples of successful measures, and the web of mutual assistance is now being woven ever more tightly.

CONCLUSION

A shrinking world created by computerised technologies has benefits and costs. Many people, especially in first world nations, now enjoy economic, cultural, and recreational opportunities that were previously inaccessible to them. On the other hand, the rapid movement of people, money, information, ideas, and commodities, has provided new opportunities for crime. We have identified and illustrated the varieties of cyber crime and the problems and potentials for law enforcement and crime prevention. The main danger to enforcement and crime prevention is over-regulation. This may chill investment and innovation. There is a need to seek a balance between a tolerable degree of illegality and creative development of new technologies.

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QUESTIONS

1. Given the limited resources available in most countries to combat cyber crime in all its manifestations, what offences should take priority for police investigation? Why?
2. What challenges does the widespread public availability of strong encryption pose to law enforcement agencies? Are there any solutions?

3. Is it possible to measure the scope and financial impact of cyber crime, and is it important to make such an assessment?
4. To what extent can preventive measures and the market place provide more efficient solutions to cyber crime than legal interventions?
5. Some countries try to prevent cyber crime by restricting Internet access. What are the disadvantages of such a strategy?

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www.infowar.com
(visited 8 March 2002) Contains an encyclopedic collection of materials on computer crime and information warfare.

www.cs.georgetown.edu/~denning/
(visited 8 March 2002) This is Dorothy Denning's home page, which has lot of links relating to computer security.

www.cyber-rights.org/
(visited 8 March 2002) Contains information about cyber crime from a UK and civil liberties perspective.

www.anu.edu.au/people/Roger.Clarke/
(visited 8 March 2002) This is Roger Clarke's home page, which has Australian content on electronic commerce and information privacy.

CHAPTER 11

CRIMES ACROSS BORDERS

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KEY WORDS

- transnational crime
- money-laundering
- terrorism
- illicit drugs
- arms smuggling
- people trafficking
- people smuggling
- global village

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INTRODUCTION

Breaking down borders

Until recently, crime was mainly viewed as a domestic problem. That is, each country has defined its own crimes using domestic criminal law to do so, and responded to the occurrence of such crimes using its own justice processes. Until well into the 20th century, almost all crimes were local in nature, committed by citizens or other entities (for example, a corporation) of a nation-state against fellow citizens or other entities of the same state. Many such crimes would be committed against those who lived in the same town, village, or urban neighbourhood. However, crime is no longer only a domestic problem. Modern systems of communication and transportation have enabled crimes to be committed by persons who are citizens of one country against citizens of an adjacent country, or indeed of a country on the other side of the globe. A significant feature of these changes in the organisation and commission of criminal activity is that national borders, the geographical limits of sovereign nation-states, have become far less significant in terms of defining what is crime and what can, and needs to, be done about it. As we shall see, some forms of transnational crime that have come to light in recent years (especially illicit drugs) are extremely profitable activities. Consequently, there is no shortage of willing participants, and the level of determination exhibited in these activities leads to high levels of corruption and violence.

Of course, cross-border crime is not limited to national borders. Australia, with its federal system of government, has State and Territory borders. Each State and Territory has its own criminal law and system of criminal justice, as does the Commonwealth.[1] We shall see that the nature of transnational crime and terrorism has placed a greater emphasis on Australia's national capacity to respond to these problems. This implies at the very least the need to better co-ordinate State and Territory laws and law enforcement resources. Realistically, it also raises questions about what kinds of national law enforcement bodies are needed. The emergence of the Federal Bureau of Investigation in the United States as a major law enforcement agency followed the appearance of crime groups operating across State borders within the United States (Poveda 1990). Recent trends in transnational crime in Australia have also caused a re-examination of the role and resources of federal law enforcement agencies. In keeping with the transnational theme, the emphasis of this chapter will be upon those crimes that involve crossing national rather than State or Territory borders.

UNDERSTANDING TRANSNATIONAL CRIME

Defining transnational crime

While the activities undertaken by transnational organisations or individuals are often ones that themselves constitute crimes within particular countries (for example, murder, fraud, cultivation of narcotic drugs), it is the *cross-border* aspect that is especially significant for understanding transnational crime. The involvement of more than one country in this activity is commonly associated with, indeed premised upon, differences of law and law enforcement effectiveness between those countries. As Sandy Gordon noted, "International criminals depended on the ability to exploit differences and inefficiencies between jurisdictions. And globalization has greatly enhanced their prospects of doing so" (Gordon 1999, p 30). In the case of money-laundering, for example, transnational crime groups have tended to move illicit earnings from crimes committed in countries where such activities are profitable (typically, rich countries) to countries with poor or non-existent banking regulations (often, developing countries). By spreading their activities across different countries, these groups are able to take advantage of one system's weaknesses to conceal or avoid detection by law enforcement authorities.

Louise Shelley defines transnational crime groups as:

> "organized crime groups (1) that are based in one state, (2) that commit their crimes in at least one but usually several host countries whose market conditions are favourable, and (3) in which the possibility of conducting illicit activity affords low risk of apprehension" (Shelley 1999, p 26).

Transnational crime in many ways resembles legitimate forms of transnational business (Shelley 1999). Both benefit from modern forms of communication and transportation to advance and expand their businesses. Both are profit-motivated and typically seek new markets and greater market share for their goods and services. The major difference is that the good or service provided is illicit in one case (for example, heroin), and quite legal in the other (for example, televisions). Another difference is the often extensive corruption and violence associated with transnational crime, and less commonly found in so-called legitimate businesses.

Main forms

The chapter will focus on three major categories of transnational crime:

1. illicit drugs;
2. people smuggling and trafficking; and
3. money-laundering.

Those cross-border criminal activities associated with the internet and other information and communication technologies (often referred to as cyber-crimes) are examined above in Chapter 10. For space reasons, other examples of transnational crime such as small arms smuggling, prostitution, environmental destruction, hazardous wastes, and internet pornography are not dealt with here. However, the phenomenon of terrorism is considered in this chapter because its links to transnational crime are beginning to attract attention. Finally, we look at crime control measures in response to both kinds of illegal activity.

Main actors

Like any other kind of crime, individuals are involved in the commission of transnational crimes. For example, a person carrying drugs in a suitcase may be engaged in illegal drug trafficking. However, the cross-border element of this activity typically implies the need to co-ordinate a number of different individuals – the person supplying the drug, the courier, the person buying the drug, and perhaps, a corrupt customs official at the airport at which the courier arrives. In complex transnational crimes, the services of those in the banking and financial sectors, the legal and accounting professions, and computing and information technology services, have been essential for the successful conduct of these crimes.

Organised crime groups, often described by different tags (for example, cartels, mafias, outlaw motorcycle gangs), commonly play this co-ordinating role, locating, instructing, and employing a range of different persons in order to carry out crimes. Organised crime has generally earned its "organised" tag by reference to its *networks* beyond the immediate group that plans and directs the criminal activity. The Fitzgerald Commission in Queensland showed, for example, the connections between politicians, police, and criminals involved in prostitution and illegal gambling that enabled those crimes to be committed for many years with little risk of interruption (Queensland 1989). While some scholars have doubted the extensiveness and degree of organisation of many so-called "organized crime" groups, there is considerable scope in how these groups are defined. The *United Nations Convention Against Transnational Crime 2000*, in Article 2(a) states:

> "[An] organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

A "structured group" in this context is essentially a group not randomly formed for the immediate commission of an offence but can otherwise be quite flexible. "Serious crimes" refers to offences punishable by imprisonment for at least four years. In the early 1990s, Australian law enforcement authorities began to speak of "criminal milieux," rather than criminal organisations, to reflect the often fluid, non-hierarchical nature of many such groups (Australia 1994). Interestingly, this trend has parallels in legitimate organisational life in recent years, with organisations "down-sizing" and relying more on independent contractors to provide services.

Transnational crime also requires an ability to co-ordinate individuals and groups *in different geographical locations*. This in turn requires an ability to communicate across often quite different settings, and the cultivation of interpersonal trust. While transnational crime, especially in its most sophisticated forms, depends ultimately upon having persons with the necessary skills for undertaking the illegal activity successfully, a shared cultural identity can provide a distinct advantage (Gordon 1999). Here, we can include groups referred to as outlaw motorcycle gangs (OMCGs) whose sense of solidarity and separateness from the rest of the population can resemble other forms of cultural identity. The very same features of organised crime networks that enable transnational crime to take place can also serve to frustrate efforts at law enforcement. Law enforcement authorities unable to speak Russian, or Spanish, or Romanian, for example, face real difficulties tackling crime groups based around these language groups and cultures.

A final observation regarding actors is that *government regimes*, not just individual state officials or private individuals, can become actors in transnational crime. In other words, the political group in charge of a nation's government may be actively involved in criminal activities across borders, typically using its employees (police, the military, customs officials and so on) to advance those ends (Bayart et al 1999). Several sub-Saharan African countries have pursued elite interests in illicit drugs, arms, and diamonds at the expense of the national interest (Reno 1998). Also, countries such as Myanmar (Burma) and Afghanistan have had governments actively involved, or at least complicit, in the production and trafficking of opium for the heroin trade. Government involvement in illicit activities is not limited to developing countries. For example, in Italy during much of the post-war period, the governing Christian Democratic party was found to have had many links to the Mafia and other organised crime groups in Sicily and other parts of the country (Stille 1996).

Motives

The motivation for most transnational crime is personal enrichment from the high profits to be derived from illicit trades in goods such as narcotic drugs, small arms, people smuggling, and precious stones. The higher the profits to be made from illegal activities, the more contenders there are likely to be seeking a "slice of the action", and the more organised the groups that get involved will become. As we shall see in the discussion below of money-laundering, estimates of the profits obtained through transnational crime are truly staggering.

The ends to which these illegal gains will be put, however, are not always purely selfish ones. Some involved in transnational crime seek wealth in order to advance political causes, and indeed on occasions to provide services to sections of the population who have no other provider for that service. Thus, for example, in Colombia, the late Pablo Escobar, a principal of the "Medellin cartel", used some of his illegal earnings to build houses, sports facilities and provide other public services for local people (Strong 1995). Warlords in Afghanistan and leftist guerrillas in Colombia have in part financed their military-political activities against the state through involvement in illicit drugs. The irony is that the state contributes to its own destabilisation and to social instability by legislating to prohibit certain things (especially illicit drugs), thus ensuring a source of profit for its political opponents.

MAJOR KINDS OF TRANSNATIONAL CRIME

Illicit drugs

It is impossible to know how much trade in illicit drugs occurs in Australia each year, how much is consumed, or the volume of illicit drugs brought in from overseas. Estimates from drug seizures are one of the best information sources available, but they remain estimates rather than precise statements of the volume and nature of the trade. The National Crime Authority stated:

> "Law enforcement has interdicted [stopped] only a fraction of the illicit drugs circulating in the community. In the year 1999/2000 Australian law enforcement agencies seized a total of approximately 5.3 tonnes of illicit drugs in Australia. Of this 5.3 tonnes, approximately 734 kilograms was heroin. Based on a conservative consumption rate of approximately 6 tonnes ... this represents just 12% of the heroin being consumed. If the higher consumption rate of 8 tonnes is considered, the interdiction rate is even more alarming" (2001, p 22).

Despite improved levels of illicit drug detection by Australian Customs, the Australian Federal Police, and other law enforcement agencies, there is clear evidence of a continuing strong demand for and free availability of drugs such as heroin, cocaine, cannabis, and amphetamines on the streets of Australian cities (Australian Bureau of Criminal Intelligence 2001, p 40).

A major challenge for global society

The international trade in illicit drugs is widely viewed by the United Nations and other observers as the most worrying form of transnational crime. Secretary-General of the United Nations, Kofi Annan, wrote in 1997:

> "Illicit drugs destroy innumerable individual lives and undermine our societies. Confronting the illicit trade in drugs and its effects remains a major challenge for the international community. Although the consumption of drugs has been a fact of life for centuries, addiction has mushroomed over the last five decades. It now demands a determined and international response" (United Nations 1997, p 6).

In Australia, the National Crime Authority recently reported that "[i]llegal drugs are currently the most lucrative commodities for organized crime" (NCA 2001, p 20). This trade is widely seen as a global menace to states as well as to individuals, not least by the United States. The consequences of the illicit trade can be, and are, calculated in a variety of ways. These include the number of drug detections and arrests, the street price of the drug, the number of drug users and related health effects, the rates of drug-related crimes (for example, acquisitive crimes undertaken to raise money to buy drugs), and the effects on governance (corruption of public officials; intimidation of officials; and violent attacks on government institutions and personnel). It has led to efforts by bodies such as the United Nations to coordinate an international response to the illicit drugs issue (UN 1997).

Features of the Illicit Drug Trade

As Kofi Annan pointed out, there is nothing new about drug use. What has changed over time is society's assessment of drug use, and hence its willingness to criminalise some forms of drug production, sale and use. Prohibition regimes have a clear association with the growth of illicit markets in goods and services, especially when demand remains strong, causing prices to rise. The 20th century witnessed a considerable tightening of laws related to drug use in developed countries, making the production, sale and use of drugs such as cannabis, heroin, and cocaine illegal in many countries. Continued strong demand for drugs, especially in well-off Western countries, has meant that illicit markets have developed to meet demand, encouraged by the profits to be made from such activity (United Nations 1999, p 171).

Here, the transnational element becomes central to an understanding of this type of crime. The illicit drugs, heroin, cocaine, and (to a lesser extent, cannabis), are mainly or exclusively produced from plants grown in relatively underdeveloped countries. Also in such countries, the effectiveness of law enforcement authorities in disrupting the trade and prosecuting offenders is limited, meaning that the reduced risks from the criminal justice system in that environment make it an attractive base for criminal entrepreneurship.

Because the location of production is typically different from that of the principal markets for drugs such as cocaine and heroin, the trade in illicit drugs depends upon establishing networks connecting the different stages of the business (cultivation, manufacture, trafficking, sales). In order to connect the source with the market, these networks inevitably cross at least one, and sometimes, many, national borders between the point of cultivation and consumption. For example, cocaine seized on the Western Australian coast in 2001 started its journey in the coca fields of South America, before being turned into cocaine base in a jungle laboratory, then later into cocaine powder, somewhere in Colombia. It had then been transported via the Caribbean and Central America across the Pacific to Australia. If it had gone undetected, it would then have been passed into Australian distribution networks for sale to small dealers and cocaine users.

Linnet Beach, drugs on beach with officers

Source: Photo courtesy Australian Federal Police

Methods of *trafficking* illicit drugs reflect changes associated with globalisation. Increased volumes of air passengers between countries have played a significant part in the movement of drugs such as cocaine and heroin, and more recently, amphetamines. It has also made the detection of drug movements very difficult. In the 1999-2000 financial year, more than 8 million passengers arrived at Australian airports from overseas (NCA 2001, p 19). Many passengers come to Australia from South East Asia, particularly the "Golden Triangle'" (Thailand, Myanmar and Laos) where 20% of the world's production of opium, the raw material for heroin, is produced.

The trend towards containerisation of goods for export in the context of expansion of global exports has also led to a greater use of shipping containers for concealing illicit drugs. During the same financial year, Australian ports received just over 1.6 million containers (NCA 2001, p 19). Less than 1% of these containers is ever inspected by Customs or other law enforcement officials.

Drug *production* also reflects global trends, as precursor chemicals needed for production of drugs are now more widely available, enabling production in a wider variety of countries. Also, the expertise for producing drugs can be readily disseminated by means of airline travel (sending experts to other countries) and the internet. In one case, a Colombian chemist was arrested in Sydney and charged with cocaine offences after travelling to Australia from Colombia to participate in a cocaine operation.

Dialogue Box 11.1

The Colombian Connection

In early 1998, a series of large cash transfers from Adelaide totalling $6.5 million was detected by Australian Transaction Reports and Analysis Center (AUSTRAC), directed to bank accounts in Hong Kong, Canada, South America, the US, the Middle East, South Africa and Spain. The Australian Federal Police, Australian Customs Service, and AUSTRAC combined to investigate the source of the funds. Following a telephone tap of an Adelaide apartment, law enforcement officials became aware of a sailing boat that had left from Venezuela, loaded with Colombian cocaine. AFP and Customs suspected the boat was headed towards Coffs Harbour, NSW, and laid in wait. When the boat finally arrived, they discovered 225kg of cocaine, with a street value of up to $50 million, concealed in the panels of the boat's dinghy. Two persons involved received life imprisonment sentences, while those involved in money-laundering received short prison terms.

Source: Steene 2001.

While drug policy in Western countries might suggest the contrary, those "supply" countries face their own problems linked to transnational crime. Struggling economies, unequal development, shortage of legitimate economic activities, and corrupt or inefficient state administrations, provide fertile ground for establishing drug cultivation and production ventures. Those who tend the opium or coca crops very often come from extremely impoverished backgrounds. For them, there is usually no other crop that they can grow that is anywhere near as profitable (Clawson & Lee 1998). Also, the production of these crops is commonly supported by crime groups and private "armies" whereas the state can offer relatively little by way of viable alternatives. In simple economic terms, the mixture of incentives and pressures upon poor residents of these countries to get involved in the early stages of this international criminal trade is often overwhelming.

People smuggling and trafficking

By choice or under duress, people are on the move at a global level. Various "push" and "pull" factors have caused increased people mobility. Tourism, economic opportunity, relative deprivation, and political violence are each spurs for people movement (Schloenhardt 2001). Australia recorded nearly 18 million arrivals and departures in the year 2000/01 (Australia 2001a). A key policy challenge for governments is controlling the flow of persons across national borders. Distinguishing between legitimate refugees or tourists and unauthorised migrants has been particularly difficult for authorities. Australia had a 244% increase in illegal entrants between 1997/98 and 2000/01, mainly through increased arrivals by boat. In 1997/98, the number arriving by boat was 157; in 2000/01, it was 4,175 (Australian Institute of Criminology 2001). For many governments, this issue has taken on additional urgency since 11 September 2001, with concern about possible cross-border movements of terrorist group members.

Two phenomena have been of particular concern to governments and law enforcement officials – *people smuggling* and *people trafficking*. People smuggling is covered by the United Nations *Protocol against the Smuggling of Migrants by Land, Sea and Air*. The Protocol refers to "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State […] of which the person is not a national or a permanent resident" (Article 3). As Tailby notes (2001, p 2), the emphasis here is on "the illegal crossing of national borders for profit".

By contrast, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* refers to:

> "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." (Article 3)

People *trafficking* has the additional element of duress for the purpose of exploiting the person once he or she is landed in the country of destination. While trafficking is not an offence as such in Australia, the related activities of slavery, sexual servitude, and deceptive recruiting for sexual services are offences under Commonwealth criminal laws.

Tailby points to a variety of persons involved in these two activities in the Australian context: migration agents, corrupt border officials, Indonesian boat crews, Chinese criminal operations, Thai syndicates recruiting Asian prostitutes, and Middle Eastern syndicates facilitating movement of Iraqis, Afghans, and Turks (Tailby 2001a, p 3). Most of those who come by sea use Indonesia as their final staging point. The long migratory routes taken by many of those smuggled or trafficked, requiring safe-houses and co-operative government officials and other service suppliers in transit countries, suggests that rather extensive criminal networks are involved (Tailby 2001a, p 4).

Another element of illegal people movement is the supply of false documentation, in particular passports, and birth certificates. The networks involved in these activities are not solely linked to the Middle East. There is also evidence of Chinese people smuggling operations operating between the People's Republic of China, Hong Kong, Macau, Taiwan, and Australia. While "suppliers" and "transporters" are largely off-shore based, Australian-based groups or individuals are assisting in the reception of boats on the eastern coastline and the settling of illegal entrants from mainland China in major Australian cities (Tailby 2001a, 2001b; Schloenhardt 2001).

Money-laundering

Money-laundering is "the process by which illicit source moneys are introduced into an economy and used for legitimate purposes" (Walker 1995, p 1). The objective is to disguise the illicit nature of the money's origins (Financial Action Task Force 1990, p 1). Given the covert nature of transnational crime and the traditionally secretive nature of the banking and financial services sectors, it is difficult to calculate the extent of money-laundering in the global context, or indeed nationally. At the global level, recent estimates have been made of between 2 and 5 percent of global GDP, and of as much as US$450 billion. In Australia, John Walker in 1995 estimated that as much as AUD$5500 million may be sent out of Australia to overseas tax havens, and as much as AUD$7700 million may be brought to Australia for money-laundering purposes (Parliamentary Joint Committee for the National Crime Authority 2001, p 50).

Illicit drugs trafficking has been viewed as the major source of those proceeds. Those involved in money-laundering drug profits have had to find ways of dealing with substantial quantities of hard currency. Analysts have identified three key steps in the money-laundering process:

1. *placement* – locating the proceeds of crime in a legitimate context, often in a bank account, without disclosing the source of those proceeds;
2. *layering* – the movement of the proceeds to other accounts in a series of transactions that obscures their real ownership and origins; and
3. *integration* – blending the funds into the legitimate economy by investing in lawful activities, for example, building hotels, thus eliminating any traces of the tainted origins of the proceeds (PJCNCA 2001, p 49).

Historically, much of the money that has been laundered has been moved physically in the placement phase from one country to another, although new electronic funds transfer technology is changing the way some of this business is being done (see above, Chapter 10). This commonly involves many people acting as couriers for large currency movements, and it requires the participation of banks and other professional assistance in the country of deposit in the layering and integration activities.

In the Pacific region, small island states such as Nauru, Vanuatu and the Cook Islands have attracted much attention from the Financial Action Task Force (FATF) and other regulators for operating lax financial regulatory regimes. By design or by default, these states enable illicitly earned funds to be laundered through the "shell" banks established in their small cash-strapped economies in order to facilitate questionable financial transactions. A key player in tracking illicit money movements in and out of Australia is the Australian Transaction Reports and Analysis Center (AUSTRAC). Through a monitoring role established under the *Financial Transaction Report Act* 1988 (Cth), it acts as a financial intelligence unit for law enforcement and taxation authorities. Its mission is to contribute "towards a financial environment hostile to money laundering, major crime, and tax evasion".

Dialogue Box 11.2

Off-shore banking in Nauru

Nauru has attracted considerable attention for its off-shore banking facilities. It has been possible for an individual or company to establish a bank there for as little as $25,000, without having even to visit the island. According to a recent report in *The Economist*, some 400 people have done exactly this, all of them sharing the same registered address of a post office box at "a tiny cabana in Nauru" (Economist 2001). The same article reports that some US$70 billion dollars, the proceeds of Russian organised crime, disappeared into Nauruan bank accounts in 1998 alone. As the noose of the international regulatory and banking system tightened around Nauru towards the end of 2000, salvation of a kind came, ironically enough, in the form of playing a role in Australia's "Pacific Solution" for the influx of boat people from the Middle East.

Terrorism

Australia has had little direct experience of terrorism. It has been observed that "Australia's first real exposure to international terrorism was probably the bombing of the Sydney Hilton Hotel in March 1978", in which a police officer and two council workers were killed and substantial property damage was caused (Australia 2002b, p 1). More recently, Australian governments, military, and law enforcement authorities were involved in counter-terrorism preparations in relation to the Sydney 2000 Olympics and the Commonwealth Heads of Government Meeting (CHOGM) in March 2002 on Queensland's Sunshine Coast. However, since 11 September 2001, Australia, like other nations around the world, has become highly conscious of terrorism as a potential threat to political stability and the safety of its citizens.

Defining what amounts to terrorism is fraught with difficulty. While few would publicly question the terrorist label being applied to the events of 11 September 2001, finding agreement between nation-states and cultures on what exactly amounts to terrorism is not always so straightforward. For example, is the destruction of an oil pipeline vital to the economic fortunes of a repressive government, committed by a guerrilla group dedicated to overthrowing that government, an act of terrorism or a defensible act of political resistance? The debate over whether or not Palestinian suicide bombers are terrorists is another recent example. The problem at base often comes down to a lack of shared definition of who is a terrorist – as the phrase goes, "one person's terrorist is another one's freedom fighter".

A recent analysis of terrorism identified four core elements:

1. Acts or threats of violence or criminality
2. That are significant in seriousness or magnitude
3. That are motivated by political, social, or ideological objectives, and/or
4. Are intended to influence a government or intimidate or coerce the public or a section of the public (Parliament of Australia 2002, p 5).

These definitions provide some clues as to who is a terrorist and motivations for terrorism. Typically, those labelled terrorists are "outsiders" with a grievance against the established political system or way of life. Their methods indicate that they act from positions of actual or perceived subordination in the society in which they take action (for example, separatist groups such as ETA in Spain). Moreover, they generally see little point in pursuing change through conventional political methods. Historically, much terrorist activity has occurred within, not across, the borders of nation-states. The goal has been a change of regime and/or political system (as sought by revolutionary groups such as FARC in Colombia) or the establishment of a separate state (as seen, for example, in Quebec in the 1960s, or in the Basque region of Spain in the 1990s). However, the al-Qaeda example points to the transnational aspirations of some such groups.

The highly decentralised structure of transnational "terrorist" organisations and their typically irregular methods of operation make them difficult to isolate and demobilise by military or law enforcement means. The fact that they appear to receive the express or tacit support of some countries, enabling them to find havens from attack, raise funds, and train operatives, poses another obstacle to dealing with terrorism. The debate continues as to whether terrorism is primarily an issue for military intervention or for the criminal justice system. In contrast to the swift, peremptory nature of most military responses, the latter implies the careful application of legal protections to persons suspected of committing terrorist acts, and punishing them as criminals if convicted. While terrorists typically commit ordinary crimes in the course of their terrorist activities, there has been little effort until recently in Australia to create a specific offence of terrorism. Future responses to terrorism seem likely to reflect a mixture of criminal and military approaches (Australia 2001b).

CRIME CONTROL IN THE GLOBAL VILLAGE

Ways of responding to transnational crime can be considered on two levels – the national and the international.

At the national level, one of the primary considerations is the adequacy of the criminal law and the mechanisms for enforcing the law domestically. Here, while Australia's international obligations to tackle transnational crime and terrorism are growing, Commonwealth and State criminal laws have long had the capacity to deal with such crimes as murder, extortion, fraud, kidnapping, drug importation and trafficking, and sale of illegal arms. Asset seizure legislation has been a relatively recent development domestically in confronting organised crime. In the field of terrorism, there have been offences related to treason and the indiscriminate use of violence in place for many decades. Recent moves to create a separate offence of terrorism point to the symbolic importance attached by governments to this issue since 11 September 2001.

However, the structure, resourcing, and co-ordination of relevant domestic agencies is another issue. Fighting organised crime is often seen to justify special investigatory powers, a view that led to the formation of the National Crime Authority in 1984. In particular, powers of electronic surveillance, requiring production of documents, and compelling answers to questions in investigative hearings, are some of the extraordinary powers granted to specialist law enforcement agencies by governments in recent years in order to deal with the threats seen as posed by organised crime (Leaver 1997).

More recently, Australian government bodies concerned about transnational crime and terrorism have referred to the need for a "whole of government" approach (Irwin 2001). This refers to a multi-agency approach involving partnerships between law enforcement bodies and a range of other government and non-government agencies. Sharing of intelligence and pooling ideas and resources for the provision of solutions are key elements of this approach.

At the international level, Australia has obligations under international treaties and conventions such as the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* and the *United Nations Convention Against Transnational Crime 2000*. There is also a broadly accepted need for Australia to develop relationships with law enforcement authorities in other countries to facilitate strategies for jointly tackling transnational crime and enabling the prosecution of offenders. The global "fight" against illicit drugs, by involving the United Nations and the United States of America as key players, has played a major role in helping to establish and maintain these links (McFarlane 2000). The Australian Federal Police now has an extensive network of liaison officers overseas. Their role includes intelligence gathering and sharing with other police forces. Australia is also party with a number of other countries to a variety of extradition agreements and mutual legal assistance treaties (MLATs). These facilitate the hand-over of alleged offenders and the collection of evidence in one country for the purposes of prosecution in another.

Bruce Bagley recently wrote:

> "The real key to success in both the 'war' on terrorism and the fight against transnational organized crime will be whether or not the international community has the will and capacity required to design and institutionalise effective systems of multilateral coordination and cooperation over the long haul" (Bagley 2001, p 17).

The practical problems of law enforcement authorities working across borders with their counterparts in other countries should not be underestimated. Different legal systems, cultural attitudes and law enforcement priorities can slow or prevent co-operation. This was evidenced in the unsuccessful attempts to extradite the late Christopher Skase from Spain. Moreover, the capacity and integrity of state law enforcement officials in "weak" or "failed" states cannot be taken for granted, especially in countries where corruption is widely practised. Finally, many have pointed to the need to address the underlying social and economic conditions that permit transnational crime and terrorism to flourish in many developing countries (Schloenhardt 2001; Tailby 2001b).

CONCLUSION

> "It is not a great exaggeration to say that transnational organized crime has been joined with terrorism to fill the gap in rhetoric about national security left by the Soviet Union's disappearance from the historical stage" (Farer 1999, p 252).

Transnational crime groups, like terrorist organisations, represent to many observers significant threats to the integrity of nation-states and to the maintenance of relatively peaceful societies. The actions of transnational criminals and terrorists have political as well as criminal consequences, rendering classification and policy responses difficult and complex. Is it sufficient to designate events as crimes, even when there is a clear intent to provoke fear in the community or to achieve some other ideological objective? Are law enforcement responses adequate and appropriate to the challenge, or are other responses required? While military solutions are sometimes proposed or enacted in response to transnational crime and terrorism, the underlying factors that precipitate both kinds of activity must be addressed. Ousting the Taliban regime may have dented the fortunes of the al-Qaeda terrorist organisation, but it has also coincided with a renewal of opium production in Afghanistan, historically the provider of most of the world's opium (Australian Broadcasting Commission 2002). Until relatively poor countries have real economic alternatives to illicit drug production and other illicit activities, transnational crime and terrorism will continue to thrive.

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QUESTIONS

1. What are the major forms of transnational crime?
2. What can you observe about the nature of the goods and services involved in transnational crime?
3. Why is transnational crime seen as a threat to national and international security?

4. What is terrorism? Is it a "crime"?
5. How does law enforcement respond to the crime challenge posed by transnational criminal actors?
6. What strategies would you recommend to the Australian government for dealing with (a) transnational crime; and (b) terrorism?

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Australian Parliament Terrorism site

www.yorku.ca/nathanson/default.htm
Nathanson Center for the Study of Organized Crime and Corruption

www.undcp.org/palermo/convmain.html
United Nations Convention Against Transnational Organized Crime

www.undcp.org/index.html
United Nations Office for Drug Control and Crime Prevention

Notes

[1] There are a variety of arrangements in place within Australia that address the inter-juridictional issues associated with criminal law and law enforcement. These include the Standing Committee of the Attorneys General (SCOAG), the Australasian Police Ministers Council (APMC), and the Australasian and South West Pacific Police Commissioners' Conference.

PART 3

Understanding criminal justice

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Goldsmith

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Sutton & Cherney

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Israel

CHAPTER 12

AIMS OF THE CRIMINAL JUSTICE SYSTEM

Kathleen Daly, Griffith University

KEY WORDS

- discretion
- retributive and utilitarian punishment
- Crime Control and Due Process Models
- processual and dispositive decisions
- informal justice
- indeterminate sentencing
- desert-based sentencing
- restorative justice

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INTRODUCTION

This chapter considers the purposes, aims, and values of a criminal justice system and the controversy surrounding each of its terms: system, justice, and criminal. It describes the agencies that form the justice system and the passage of cases through it. Central to the criminal process is the exercise of *discretion* by police officers, prosecutors, defence attorneys, judicial officers, probation officers, and community and institutional correctional staff. As important, are the roles of ordinary citizens in reporting crime, working with officials, and participating in the process. Ordinary citizens and justice system workers have strong beliefs on what a criminal justice system should try to achieve. These debates are reviewed, and models of the criminal process are described. Major theories of punishment, their changing popularity across two centuries, and the emergence of restorative justice are also discussed.

THE PRACTICAL AND SYMBOLIC SIGNIFICANCE OF DOING JUSTICE

Over the past two centuries in countries like Australia, the criminal justice system has served two purposes. The first is instrumental or utilitarian: the state responds to crime to secure benefits to the wider society such as crime prevention and crime reduction. A second is symbolic or non-utilitarian: the state must redress imbalances caused by those people who take illegal advantage of another or diminish their human dignity. The first is pragmatic and future oriented: policies and practices are evaluated by their consequences, by their future effects such as reducing crime or reforming people. The second is based on moral principles and is backward oriented: policies and practices are required to enunciate and reinforce what is collectively understood as right and wrong behaviour. Both *crime reduction* and *symbolism* are essential to contemporary notions of doing justice.

THE CONTROVERSIAL CHARACTER OF THE CRIMINAL JUSTICE SYSTEM

System or Collection of Agencies?

The phrase *criminal justice system* invites much conjecture. Each term may be queried, and this leaves the validity of the phrase in doubt. All commentators agree that the various agencies that comprise the system are only loosely coupled. A more accurate term for *system* would be a "collection of interdependent agencies", each having its own function.

As Davies, Croall and Tyrer (1998, p 4) observe, "the criminal law does not enforce itself". Rather people working in particular agencies enforce it: that is, the police, prosecutors, magistrates and judges, and probation and prison personnel. Table 12.1 below lists each agency and its functions in Australia and other countries that have an adversarial (also termed accusatorial) criminal justice system. Adversarial criminal justice is associated with common law systems in countries such as Australia, New Zealand, the United States, Canada, and the United Kingdom. It means that the two parties in the case—he prosecution and the defence—bring evidence before a magistrate, judge, or jury, each of whom acts as a fact finder. Inquisitorial criminal justice is associated with civil law systems in countries such as Germany and France. In this system, the prosecutor or police officer assembles the case (or dossier), but the judge calls witnesses and examines them (see Sanders & Young 1994, pp 7-12).

Each criminal justice agency is subject to "legal regulation and bureaucratic administration" (Findlay, Odgers & Yeo 1999, p xviii). This means that while individuals such as police officers are empowered to gather evidence and make arrests, they must do so in a lawful manner.

Table 12.1 *Major criminal justice agencies, personnel, and agency function in Australia.*

Police
(Police officers)
Investigate crime
Prevent crime
Arrest and detain suspects
Maintain public order
Control traffic
Respond to criminal and non-criminal emergencies
Prosecution
(Prosecutors)*
Filter out weak cases, keep strong cases
Prepare cases for prosecution

Prosecute cases in Youth/Children's, Magistrates', District, and Supreme Courts, including preparing cases for trial

Courts
(Justices of the peace, magistrates, and judges)**
Decide on bail and remands (detention or not in pre-trial period)
Protect the rights of the defendant
Preside over the trial and plea process
Decide on guilt (magistrate, judge, or jury)
Sentence the defendant
Hear appeals against conviction and sentence
Provides public arena so that justice "can be seen" to be done

Community corrections
(Community corrections officers)
Prepare pre-sentence reports
Provide information to the court on the defendant's appropriateness for bail
Work with offenders with probation or community service sentences
Supervise released prisoners or pre-release work with persons in custody

Prisons
(Corrections officers)
Hold people on remand (in custody in pre-trial period)
Hold people who are sentenced to a term of imprisonment
Maintain appropriate conditions for those in custody
Provide activities that encourage learning and life skills
Prepare inmates for release

Other key organisations and actors
Victim Support Groups: counsel and assist victims at all stages of the criminal process, from arrest to prison release
Defence lawyers: provide advice to and advocate on behalf of suspects, defendants, and sentenced individuals at all stages of the criminal process.

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*In Australia, prosecution is carried out by the police in some courts such as the Youth or Children's Courts and some Magistrates' Courts in non-metropolitan areas. Prosecution is carried out by the Department of Public Prosecution in Magistrates' Courts, District, and Supreme Courts.

**Courts handle both criminal and civil matters.

Source: Adapted and revised from Davies, Croal and Tyrer (1998, p 5) with permission of the authors.

In addition to the police, there are other regulatory agencies and justice commissions in Australia that have investigative and prosecutorial powers. They include the National Crime Authority (federal), the Australian Securities and Investments Commission (federal), the Crime and

Misconduct Commission (formerly the Criminal Justice Commission, Queensland), and the Independent Commission Against Corruption (New South Wales). These organisations have "enhanced powers" of investigation, "unfettered by protections of due process", and "operate in ways which do not recognise the traditional sequences of criminal justice" (Findlay et al 1999, p 76). For these reasons, Findlay et al (1999, ch 3) term them the "new investigators". There is yet another layer of criminal law and justice, international criminal justice, which is embodied in transnational bodies such as the International Criminal Court and ad hoc United Nations tribunals (Roberts 2002). This chapter describes the traditional, domestic agencies of criminal justice; Chapters 11 and 13 look at transnational crime and law enforcement issues.

Even with a focus on domestic criminal justice, we find little evidence of a *system* of criminal justice. The agencies of criminal justice have different aims, which come into conflict with one another. Consider, for example, this list of aims put forward by the UK Home Office (quoted from Sanders & Young 1994, p 2):

- "to prevent and reduce crime, especially violent crime, and help victims;
- to ensure that those suspected, accused, and convicted of crimes are dealt with fairly, justly, and with a minimum of delay;
- to convict the guilty and acquit the innocent;
- to punish those found guilty in a suitable manner, and where possible, discourage further offending; and
- to achieve these aims as economically, efficiently, and effectively as possible."

Conflicts over aims stem from the particular functions of each agency. For example, the police are to investigate crime and arrest and detain suspects, while the courts are to protect the rights of the defendant. Conflict may also emerge from the bureaucratic interests of each agency. For example, prison officials may argue that a higher share of the budget should be spent on building more prisons, whereas the police want to see a higher share spent on crime prevention in the community. Linked to conflicts in aims are conflicts over values, that is, what the criminal justice system *ought* to be doing. For example, is it more important to handle cases *efficiently* or to ensure that people are *not subject to abuses of state power*? As we shall see in Packer's (1968) analysis, the values of *crime control* and *due process* are equally desirable, but they conflict in practice.

The most important power that people in the police service, prosecution, courts, probation service, and corrections have is *discretion* in decision-making. Criminal justice is not "an entirely predictable, consistent, or certain system". Rather, "it is a sequence of decisions where people apply, distort or ignore rules, and where other people have their lives and futures directly affected by such decisions" (Findlay et al 1999, p xvii). Such decisions are made in particular professional contexts by people in workgroups; they anticipate decisions at subsequent stages of the criminal process, and they are affected by what came before. The exercise of discretion poses important questions for research. Are some people given more favourable treatment than others? Should "like" crimes be treated the same or differently, depending on the offender's background, social circumstances, prior offending?

Justice or Injustice?

Many dispute the phrase criminal justice system, saying we should call it the criminal *injustice* system. Indeed, several Australian books have been published with this title (for example, Zdenkowki, Ronalds & Richardson 1987). What are they saying? Some are criticising practices by the police, prosecutors, or courts that suggest a "too harsh" enforcement of laws. Members of this group would say that the police more often target certain groups for arrest, typically members of racial-ethnic minority groups, and this selective use of police discretion leads incrementally to the disproportionate imprisonment of racial-ethnic minority group members. Others are criticising practices that suggest a "too lax" enforcement of laws. Members of this group would say that suspects and defendants are let off too easily, by not being arrested or prosecuted; or if they are found guilty, by not being "punished enough" for an offence. Thus, justice for some is injustice to others; injustice for some, justice to others. This alerts us to the always contested and political nature of what is considered a *just* response to crime, and to different concerns people have in *seeking justice*.

Criminal?

Finally, the term *criminal* needs to be considered. What separates criminal from non-criminal acts, or actions that are subject to a civil or administrative process rather than a criminal process? The correct answer, albeit unsatisfying, is in the form of a tautology. A criminal act is that which has been defined by a state as a crime and subject to criminal penalties. What is and is not a crime varies across time and by country, as do the penalties associated with crime. As pointed out in Chapter 1, *crime* and *criminals* are societal definitions: they are recreated, affirmed, and mobilised in the daily lives of ordinary citizens, not just those workers in the justice system.

We could define the criminal justice system this way: a loosely coupled collection of interdependent agencies, each having bureaucratic interests, and each having specific functions (which can be in conflict with other agencies) that are subject to legal regulations, where agency workers have great discretion in making decisions when responding (or not responding) to harms defined as criminal by the state, and where value conflicts exist within and across agencies and in the general population about the meaning of justice. This is a long and complicated definition. For the sake of parsimony, we shall use three terms, not 70 words. However, be mindful of the complexity and controversy associated with each term.

BOXES AND ARROWS: THE FLOW OF THE CRIMINAL PROCESS

Figure 12.1 below shows how cases move through the criminal justice system, beginning with *the crime* and ending with *out of the system*. Along the right side of the figure are the major phases of the criminal process and each agency's functions: entry into the system, investigation and charging, presentation of the case in the pre-trial period, adjudication (that is, deciding on guilt or innocence or entering a guilty plea), sentencing, and managing offenders. At each phase, people make decisions to keep the case in the system or not.

The phrase *entry into the system* misleads us into thinking that movement into the criminal process is automatic and certain, when it is not. This early phase involves many conversations between ordinary citizens, police, and legal officials about whether an incident is a crime, whether it should be reported to the police, and if it is reported to the police, how the police should handle it.

THE ROLE OF ORDINARY CITIZENS

A major problem with the phrase *criminal justice system* is that it trains our attention, wrongly, to visualise the response to crime as being that which only agency officials such as police officers, magistrates, and corrections officers do. As Lacey (1994, p 8) astutely notes, "the most under-noticed feature [of the criminal process] is that its whole operation depends on the decisions and actions of ordinary citizens".

Citizens play many roles (Lacey 1994, pp 8-10). First, they elect people to represent them in making laws, and indirectly, in enforcing them. Secondly, and most crucially, they play a substantial role, far more substantial than that of the police, in detecting and reporting crime. British data suggest that 77% to 96% of crimes recorded by the police came via citizen reports, not police detection (Lacey 1994, note 11, p 8). Police and prosecutorial investigation and evidence gathering depend heavily on the goodwill and participation of citizens as witnesses and victims of crime. Thirdly, citizens serve on juries, and while most cases in Australia are disposed of by defendants who plead guilty, the jury trial epitomises a justice drama, in which ordinary citizens have power as fact-finders to decide if a person is guilty or not of a crime. Fourthly, it is ordinary citizens who are victims and alleged (or convicted) offenders. As offenders, they may take a passive or more proactive role. As victims, additionally to their role as a crime witness, they may be called upon to participate in court diversion schemes such as conferencing (more below) and to write victim impact statements to assist the magistrate or judge at sentencing. Fifthly, citizens work as volunteers in criminal justice agencies and in organisations that serve criminal justice agencies. Sixthly, citizens are employed to detect and investigate crime, to maintain public order,

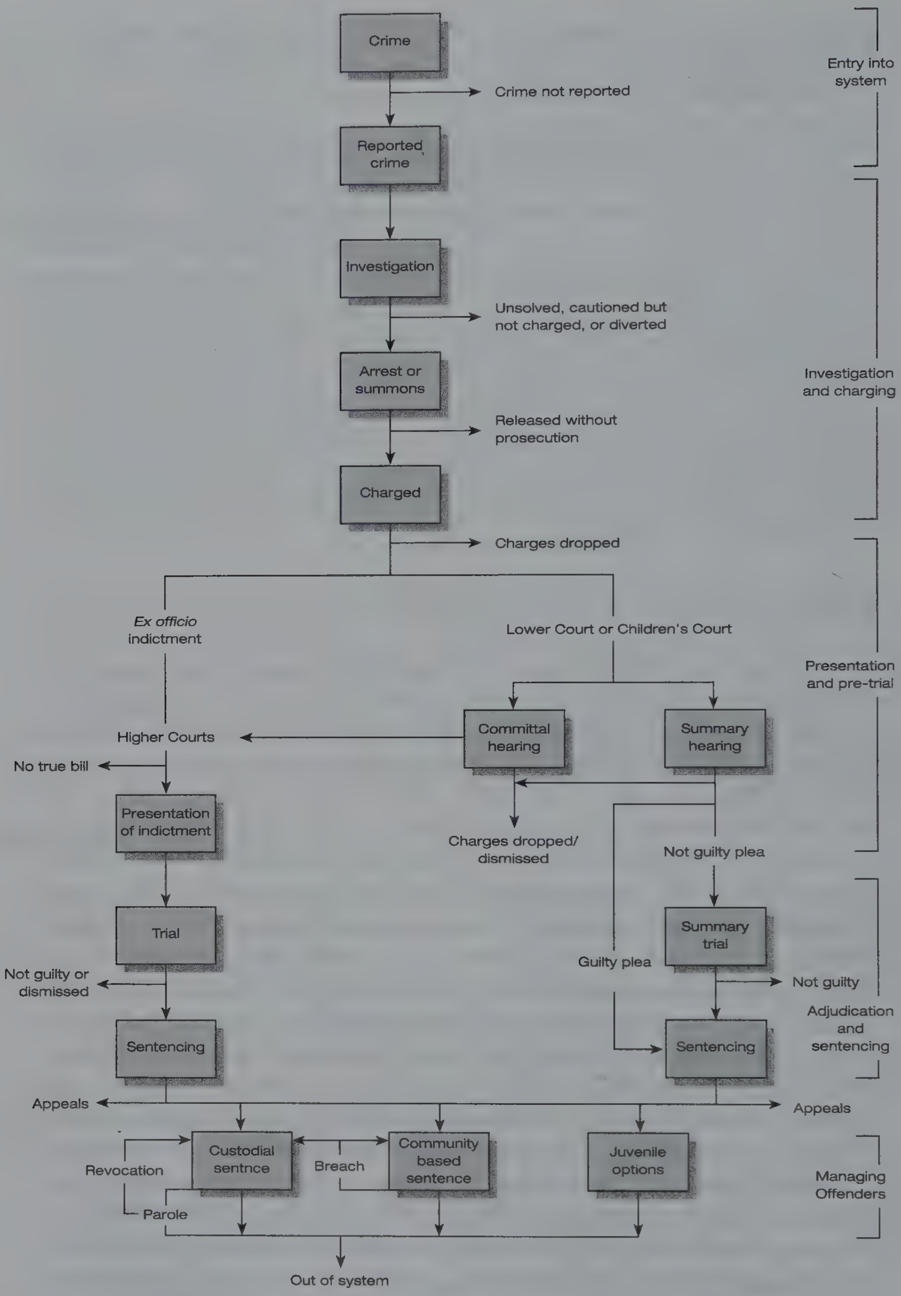
Crime
Crime not reported
Entry into system
Reported crime
Investigation
Unsolved, cautioned but not charged, or diverted
Arrest or summons
Investigation and charging
Released without prosecution
Charged
Charges dropped
Ex officio indictment
Lower Court or Children's Court
Presentation and pre-trial
Higher Courts
Committal hearing
Summary hearing
No true bill
Presentation of indictment
Charges dropped/ dismissed
Not guilty plea
Trial
Summary trial
Guilty plea
Not guilty or dismissed
Not guilty
Adjudication and sentencing
Sentencing
Sentencing
Appeals
Appeals
Revocation
Custodial sentnce
Breach
Community based sentence
Juvenile options
Managing Offenders
Parole
Out of system

Figure 12.1 *Flows through the criminal justice system.*

Note: This flow diagram is indicative and does not include complexities of the justice system or variations across jurisdictions.

Source: Reprinted by permission from the Steering Committee for the Review of Commonwealth/State Service Provision 2002.

and to work in prisons, which are run by private commercial enterprises. Citizens may also be called upon to assist the state in investigating and prosecuting crime, and in providing counselling services to offenders and victims. For example, the professional services of psychologists are called upon to work with violent offenders.

Two other groups of non-criminal justice personnel have enormous influence on the criminal process: politicians and those working in media organisations. Politicians can directly affect the criminal justice system by passing laws, such as "truth in sentencing", that constrain the discretion of sentencing officials and increase the numbers of people in prison. Passage of legislation on social and economic policies also has an indirect effect on the crime rate, as for example, when there are cutbacks to unemployment benefits or when a new road is built, which cuts through a town and disrupts social cohesion. The role of the commercial media is to entertain, not to educate the public about crime and the criminal justice system. As Chapter 5 suggests, by viewing television news, crime reality shows, and justice dramas (both real and fictional), citizens learn about the criminal justice system and form impressions, often inaccurate, about its practices.

MODELS OF THE CRIMINAL PROCESS

Crime Control and Due Process

Writing in the 1960s, when major changes were taking place in the US criminal justice system, Packer (1968, p 150) observed that "we are faced with an interesting paradox: the more we learn about the Is of the criminal process, the more we are instructed about its Ought and the greater the gulf between Is and Ought appears to become". As an example of the Is and Ought, Packer pointed out that while at the time, few suspects got "adequate legal representation" (the Is), a US Supreme Court decision in the 1960s made it a requirement that everyone charged with a felony (that is, an offence punishable by more than one year of incarceration) should receive adequate legal representation (the Ought). Although the evolution of *rights* and *protections* accorded citizens accused of crime differs in the United States and Australia, Packer's discussion of different values in the criminal process is relevant to Australia.

Packer depicted two value systems in the criminal process, calling them the Crime Control Model and the Due Process Model (Table 12.2 below). The Crime Control model is concerned with the *efficiency* of the criminal process, whereas the Due Process Model is concerned with the *accuracy and reliability* of the decisions made. An efficient criminal justice system calls for weeding out what Packer refers to as the factually guilty from the non-guilty cases as early as possible by police officers and prosecutors, who make decisions based on talking with witnesses and reviewing the evidence. Once this screening is accomplished, the case proceeds through successive stages until it is disposed. During these later stages, Packer said that officials operate on a *presumption of guilt*, meaning that, based on earlier informal investigations, they can assume that innocent individuals have been weeded out.

Table 12.2 *Values and elements associated with the Crime Control and Due Process Models.*

	Crime Control Model	Due Process Model
primary function of the criminal process	To control crime by apprehending and convicting those who commit crime.	To ensure that crime is controlled in a lawful manner; ensure that citizens are not subject to abuses of state power.
primary value	Efficiency	Reliability
operational activities	With high case loads and limited resources, a premium is placed on speed and finality. Speed depends on informality and uniformity. Finality depends on reducing challenges to decisions.	With human fallibility in witnessing crime and with state powers over citizens, a premium is placed on rendering accurate and reliable decisions. Accuracy depends on the quality of fact finding. This necessitates formal decision-making and may necessitate challenges to earlier decisions—all of which may take time.
emphasises	Quantity of "factually guilty" people apprehended and convicted.	Quality of criminal procedures and decisions rendered; distinguishes between "factual guilt" and "legal guilt".
reliance on	Early stages of the criminal process, informal fact gathering, and abilities of the investigative and prosecutorial officers.	Later stages of the criminal process, formal adversarial fact finding, and the abilities of judicial officers and defence attorneys.
metaphor	Assembly line conveyor belt	Obstacle course

Source: Adapted from Packer (1968, ch 8).

The Due Process Model has less faith in the reliability and accuracy of decisions made in the early stages of the criminal process. Greater reliance is placed on formal fact finding in the adjudication phase of the criminal process. Judicial officers are supposed to operate on a presumption of innocence, meaning that, they must "ignore the presumption of guilt" in their treatment of the accused. "It tells them to close their eyes to what will frequently seem to be factual probabilities" (Packer 1968, p 161). The Due Process Model distinguishes between the factually and legally guilty, whereas the Crime Control Model does not. *Factual guilt* is based on evidence of a person's commission of a crime, whereas *legal guilt* is based not only on this evidence, but also that the state has acted legally in obtaining evidence and proving its case.

The models differ sharply in their views of citizen–state relations in the criminal process. The Due Process Model is primarily concerned with the power of state officials to wrongly deprive citizens of their liberty. Because the criminal process is stigmatising and penal sanctions are highly coercive, the Due Process Model emphasises methods of checking the powers of state officials. The Crime Control Model is primarily concerned with the maintenance of public order, without which citizens cannot enjoy their liberty. It assumes that state officials exercise their discretion in a lawful manner with a tolerable degree of error.

Ashworth (1998, pp 27-28) points out several problems with Packer's models, among them: he failed to discuss the relationship between Due Process and Crime Control; he paid insufficient attention to financial pressures on the state's response to crime; he was silent on victims; and there are some logical lapses. Ashworth also says that in emphasising the value of speed in the Crime Control Model, Packer ignored the equal concern that a Due Process Model would give to "unreasonable delay" (1998, p 28). On the relationship between the models, he suggests that we might view Crime Control as "the underlying purpose of the system, but that it ... should be qualified out of respect to Due Process" (p 27). There is another way to view the relationship, as Doreen McBarnet (1981) and others have. The Crime Control Model is evident in Magistrates' Courts (or lower courts in Figure 12.1 above), which dispose the less serious cases, typically by guilty pleas, and where trials are uncommon. The Due Process Model is more frequent in District and Supreme Courts (the higher courts in Figure 12.1 above), which handle more serious cases, where a higher proportion of matters are dealt with by trial, and where the full repertoire of legal arguments and options is utilised. For further discussions of trial issues, see also Chapter 14.

Participant and Analytical Models

King (1981) revised and extended Packer's models. He identified three *participant* models (Due Process, Crime Control, and Medical) and three *analytical* models (Bureaucratic, Status Degradation and Status Passage, and Power) of criminal justice. The value of King's scheme is that he conceptualised the criminal process in two ways: (1) the different values and aspirations held by citizens and system workers (participant models) and (2) the different logics of the criminal justice system as theorised by sociologists and other researchers (analytical models).

Medical Model

In addition to the Crime Control and Due Process Models, with which we are already familiar, King added the Medical Model. Its major tenets are that people who commit crime can be helped, reformed, or treated to behave in a law abiding fashion. This calls for careful study by psychologists, social workers, and other helping professionals of an individual's background and conditions promoting offending. Throughout the 20th century, the medical model was typically applied to youthful offenders. It was the basis for the emergence of the juvenile court in the late 19th century, and it enjoyed popularity until the 1970s, when there was an international shift in justice policy to hold youthful offenders accountable for crime. During the 1970s, accused youth were granted new legal entitlements and the juvenile court process became more formal. During this time, the Medical Model, and the principle of punishment with which it is associated, "rehabilitation" (see more below), fell into disfavour in Australia and other nations.

Bureaucratic Model

The analytical models depict how social scientists described the criminal process in the 1960s to 1980s; however, they remain relevant today. One approach, the Bureaucratic Model, is illustrated by Abraham Blumberg (1967), who said that criminal justice was a *confidence game*, in which defence attorneys and prosecutors were not adversarial, but worked amicably in the disposition of cases. From this perspective, organisational efficiency and tight budgets are viewed as driving the system more than careful fact finding or justice ideals. All criminal justice agencies today have an eye to effectiveness and efficiency criteria. Such criteria explicitly feature in the *Report on Government Services* (2002, pp 367-69 and chs 8-10) for each phase of the Australian criminal justice process, from crime investigation to custody.

Status Degradation and Status Passage Model

Another approach, the Status Degradation and Status Passage Model, focuses on how the criminal process separates ordinary citizens from "the criminals" by denouncing their behaviour in court or reducing their status at arrest or when entering a prison. Harold Garfinkel (1956) argued that when a defendant pleads guilty and is sentenced in court, he or she goes through a "status degradation ceremony" where the crime (the act) is denounced and the offender (the person) is degraded. He proposed that this has two effects: a sense of shame by the offender and a sense of vindication by the community of its values and laws. Garfinkel's emphasis on the emotion-laden morality play of the courtroom, with law abiding community members as spectators, echoes Durkheim's (1895/1966) arguments on the expressive and symbolic importance of punishment. To Durkheim, the purpose of punishment was to increase social solidarity among the law abiding, not to reduce crime.

Power Model

The Power Model views the criminal process as structured by the class interests of the more powerful members of society. Its proponents argue that the criminal justice system is typically "unjust, discriminatory, and oppressive" toward certain groups in society (King 1981, p 26). Reiman's (1979) book *The Rich Get Richer and the Poor Get Prison* encapsulates these ideas. While this model, and the associated conflict perspective in criminology, enjoyed a great deal of popularity in the 1960s and 70s, analyses of power today are more likely to focus on multiple sources of inequality (gender, race/ethnicity), not just class (see Chapter 6).

THE CRIMINAL PROCESS AS FUNNEL

Many more common crimes, such as assaults and theft, occur than are reported to the police. Once an offence is reported, the police may decide not to investigate it or be unable to identify a suspect. If they do identify a suspect, that person may not be apprehended or arrested, or charged with a crime. If a suspect is arrested and charged, the case may go to court, but the charges may be dismissed. If a case is finalised in court by conviction (typically by a defendant's entering a plea of guilty to the offence or to a less serious offence), the defendant may receive a non-incarceration sentence. This narrowing of cases from a large number experienced by victims to a trickle of defendants convicted and sanctioned has the appearance of a funnel.

Rates of reporting crime to the police vary by the type of offence. National victimisation data show that Australian household victims of motor vehicle theft and completed break and enter incidents were more likely to report these incidents to the police (95% and 78% respectively), than were violent crime victims. Half of robbery victims, 28% of assault victims, and 33% of sexual assault victims said they reported the incident to the police (*Crime and Safety, Australia*, April 1998, 4509.0, reprinted by the Australian Bureau of Statistics 2001, Table 11.8). Once in the criminal justice system, the funnelling process varies by offence type. Using 1996 South Australian data on incidents reported to the police, we find that of serious assaults reported to the police, close to 60% were finalised in court, 29% resulted in convictions, and 7%, to serve incarceration sentences. Of break and enter offences reported to the police, just 4% were finalised in court, 2% resulted in convictions, and 1%, ended with prison sentences. Of all offences, drink driving was least subject to the funnelling effect: 86% were finalised in court and 80% resulted in convictions; while few people were incarcerated, high proportions had their driving licence suspended or had to pay a fine. Analysis of Queensland data shows a similar funnelling effect, although the precise percentages vary (Bouhours & Daly 2002).

Following Ashworth (1998), it is useful to distinguish between two types of decisions in the criminal process. One is *processual*, that is, decisions about "the processing of the case from initial charge through to trial" (p 10); these include police procedures in questioning suspects and gathering evidence, and prosecutorial decisions on what charges to lay. Another is *dispositive*, that is, decisions about "the disposal of the case" (p 10). The most well-known dispositive decision is sentencing, but there are earlier points in the criminal process where a police officer or prosecutor can make a dispositive decision by diverting a case from the court process. One disposition is a *formal caution*, which the police give as a diversion from court for admitted offenders. In Australia, formal cautions are largely used, although not exclusively, in the handling of youthful offenders (under 18 years of age). In some jurisdictions, the police can impose penalties as part of a formal caution (for example, community service, compensation to a victim). Another diversionary disposition by the police and magistrates is *conferencing*. Conferencing is a form of *restorative justice*, in which admitted offenders, victims, and their supporters meet to discuss the offence and penalty (discussed below). In the adult system, prosecutors can divert cases from court prosecution, pending a defendant's successful completion of a program. Drug courts are one example of a court diversion program; these have been trialed or have been operating in New South Wales, Queensland, South Australia, and Western Australia from 1999 to the present. Prosecutors may also decide to drop all charges, or to reduce charges as part of a sentence bargain.

PUNISHMENT: VALUES, THEORIES, AND PRACTICES

Although the distinction between processual and dispositive decisions "may be less sharp in practice than in theory" (Ashworth 1998, p 10), it alerts us to the different values that guide each. Processual decisions are guided by values of *legality* (for example, not convicting the innocent, integrity in methods of investigation, and a minimum of burdens on a defendant in the pretrial period) and *equality before the law* (consistency of treatment and avoiding discriminatory practices) (Ashworth 1998, pp 50-61). Dispositive decisions are guided by values of *proportionality and crime prevention or reduction* (pp 61-63). From the beginnings of modern criminal law, legal scholars and philosophers have debated the relative importance of the values of proportionality and crime prevention in punishment. The two values are often in conflict.

Proportionality: Desert Theory and Retributive Punishment

Proportionality is associated with desert theory, a modern form of retributive punishment. The core idea is that the penalty structure should reflect a relationship between crime seriousness and punishment seriousness (harshness), and that the absolute level of punishment should be in proportion to the harm. Thus, for example, we recognise that shoplifting is a less serious offence than robbery, and it should receive a less onerous punishment; and we recognise that five years in prison is an excessive punishment for shoplifting. A retributive justification for punishment means that a crime must be censured and that a punishment (penalty or sanction) should reflect the degree of blameworthiness that we attach to the act. The aim is to punish a crime that has occurred in the past, and thus, we may say it takes a *backward* orientation to punishment (von Hirsch 1985).

Crime Prevention: Deterrence, Rehabilitation, and Incapacitation and Utilitarian Punishment

Crime prevention is associated with several theories of punishment: deterrence, rehabilitation, and incapacitation (or protecting a community by removing an offender from it). Its aim is utilitarian, that is, to prevent future crime by reforming offenders or protecting the community, and thus, it takes a *forward* orientation to punishment. The major theories associated with crime prevention or reduction are as follows:

- Individual deterrence (also termed specific or special deterrence): to dissuade or deter an offender from committing a crime in the future.
- General deterrence: to dissuade or deter members of the broader community from committing a crime in the future.
- Rehabilitation: to change the attitudes or behaviour of offenders so they do not commit crime in the future.
- Incapacitation: to protect community members from certain offenders who may pose a threat to their welfare and safety.

Punishment in Practice

Let us reflect upon how crime prevention and desert values may conflict. Consider, for example, a first time offender convicted of stealing $100 in goods from a shop with another offender convicted of the same offence, but who has been convicted five times previously for shoplifting. Desert theory might propose a penalty of ten hours of community service for a theft of $100, with some mitigation if this was a first offence. However, what does a sentencer do if an offender keeps committing the same offence? The typical practice in Australia is to impose a sentence that partly reflects the offence seriousness (desert), but the main concern is to deter an offender from committing future crime. Hence, rather than imposing a penalty of ten hours of community service for a sixth offence of shoplifting, the sentencer will be inclined to take into account the offender's previous record, escalate the penalty, and hope that this will stop the offender from stealing again.

Eighteenth Century Foundations of Punishment

A member of the 18th century Italian intelligentsia, Cesare Beccaria (1738-1794) sketched the foundations of modern criminal law and punishment in western societies. His book, *On Crimes and Punishments* (1767/1963), had a decisive impact on societies' criminal codes. Beccaria was a utilitarian: he took a forward view to punishment by arguing that its overarching purpose is to prevent crime. At the same time, he argued that punishment should not be excessive and that it should be in proportion to the harm caused; thus, he also took a backward view based on desert principles. He applied a highly rationalist and mathematical approach to sentencing by proposing that the penalties for crime should only be slightly higher than the gains from crime. In this way, potential offenders would calculate the costs and benefits from crime, and most rational people would be deterred from committing crime. He did not consider what the penalties for crime might be for people with previous convictions.

Nineteenth Century Transformations

A century later, the justifications for punishment shifted dramatically from punishing *the crime* to punishing, reforming, or segregating *criminals*. Cesare Lombroso (1835-1909), an Italian doctor, and his colleagues founded what they called the Positive School of Criminology, which utilised the developing pseudo-science of criminal anthropology to identify and separate criminals from non-criminals. According to Lombroso, it was important to identify and segregate *born criminals* before they committed a crime. Over time, Lombroso's ideas changed dramatically; by the turn of the 20th century, he believed that there were both biological and social (or environmental) causes of crime (Lombroso-Ferraro 1911/1972).

In the latter part of the 19th century, and stemming from mixed interests, both humanitarian and otherwise, prison officials, social workers, and probation officers proposed that the criminal justice system should have a more constructive purpose of reforming and rehabilitating offenders. These ideas were consolidated with the emergence of the juvenile court, first established in South Australia in 1895 and Chicago in 1899. During the first half of the 20th century, the *rehabilitative ideal* was prominent and with it, *indeterminate sentencing*. An example of an indeterminate sentence would be "no more than 20 years" for an offence; what a person ultimately served was decided by parole board members' judgments of a prisoner's efforts to reform in prison. Indeterminate sentences permitted judicial officers and parole board members wide-ranging discretion in the imposition of penalties and in the actual time served in prison. Such an approach gave decision makers enormous flexibility to impose "therapy or restraint" and "to have it both ways: to be optimistic about criminals' potential for improvement while simultaneously being realistic about their potential for future criminal activity" (von Hirsch 1985, pp 5-6).

Twentieth Century Shift to Desert-Based Sentencing

The wide-ranging discretion by judicial officers and parole boards, coupled with the Civil Rights Movement, led to a political crisis in the

United States in the 1960s and 1970s. Prisoners rebelled over the conditions of confinement and inconsistency of punishment. The period saw a shift to a desert-based sentencing policy (also termed *just deserts*), which emphasised proportionate and fixed punishment, along with a table of tariffs, which reduced sentencers' discretion in sentencing. Desert-based sentencing had some effect on Australian sentencing, but not as strongly as it did in other nations, especially in the United States (Freiberg 1997). What has changed decisively in Australia, however, as elsewhere, is that the rehabilitative aim of punishment has been joined with, and at times superseded by, other aims. In particular, there is renewed interest in desert-based criteria and in holding offenders accountable for their acts.

While we see change over the past two centuries in the emphasis given to crime reduction or proportionality in punishment, the most important thing we learn from historical and contemporary practices is that the criminal justice system announces many goals and has a variety of practices, often in direct conflict with one another. This is illustrated well by developments during the 1970s. At the same time that desert-based sentencing emerges, along with fixed sentences that centre on punishing the crime (not the person), *informal justice* also emerges. The latter accords more attention to individualising responses that centre on the person.

INFORMAL JUSTICE, RESTORATIVE JUSTICE, AND CONFERENCING

Informal justice refers to a myriad of justice system practices that give a more central role to citizens, not just legal professionals, and to methods of resolving disputes and responding to crime in ways that more directly engage victims, offenders, and the community (Daly & Immarigeon 1998). Early examples of informal justice practices include victim-offender reconciliation programs in Canada; victim-offender mediation in England, Scandinavia, and Western European countries; and conflict resolution in the form of community boards and justice centres in Britain and North America. During the 1990s, other sentencing alternatives, referred to as *circles* or *circle sentencing*, emerged in North America; these borrowed from First Nations (Canadian indigenous people) justice practices (Morris & Maxwell 2001).

Australia and New Zealand have been major contributors to the evolution of informal justice, which today is termed *restorative justice*. Legislation passed in the late 1980s and throughout the 1990s established family or community conferencing (Daly 2001; Daly & Hayes 2001). A conference is a meeting, where an offender, victim, and their supporters discuss the offence and its impact and decide on what an appropriate penalty (or outcome) should be. A co-ordinator runs the conference, a police officer is typically present, and the conference outcome is legally binding. As of 2001, conferencing in Australia is mainly used as a *diversion* from court prosecution and available largely to *juvenile offenders* who have *admitted* to the offence. Like other criminal justice innovations in the past century (such as the rehabilitation or welfare approaches taken in the juvenile court), conferencing is often believed to be more acceptable for youthful offenders than adults. There are several reasons why this is the case. Young people tend to commit less serious offences than adults, and giving them a "second chance" is politically more acceptable than giving the same to adults; and young people are viewed as less culpable and blameworthy for their acts, and more amenable to reform, than adults.

Some restorative justice proponents say it is a third way for criminal justice: it is not concerned with punishing or reforming individuals, but rather with *repairing the harm* to victims, offenders, and the larger community (Bazemore & Walgrave 1999). Proponents argue that there needs to be a meaningful nexus between an offence and how it is *repaired* by the offender (most advocates avoid the term *punishment*). Thus, for example, they may argue that a person who shoplifted $100 in items from a store should pay back the money to the store owner, perhaps by doing some community service for the victim. One theory underpinning restorative justice is Braithwaite's (1989) theory of *reintegrative shaming*. Braithwaite and Mugford (1994) argued that Garfinkel's (1956) analysis of the court process as a status degradation ceremony showed what was wrong with the criminal justice system. While the *act* should be denounced, an *individual* ought not to be denounced or stigmatised. Rather than *stigmatic* shaming, which normally occurs in the courtroom, Braithwaite and Mugford argued that the conferencing process was superior because it emphasises *reintegrative* shaming in separating *bad acts* from potentially *good individuals*.

There is much debate today on the limits and potential of restorative justice (Braithwaite 1999; Daly 2002; Morris & Maxwell 2001; von Hirsch et al 2002). The idea has captured the imagination of those working in government, the criminal justice system, family welfare agencies, and community groups. It appears to be a better way to do justice in that it seems more humane to offenders and more responsive to victims. However, we should be aware that at present, it does not constitute an alternative justice system. Rather, it addresses only the penalty phase of the criminal process, and it is normally used only after an offender has admitted guilt. Among those working within a restorative justice framework, debate has emerged over whether penalties should conform to desert or crime reduction criteria. It is difficult to escape this debate, no matter what the time period or favoured justice practice.

CONCLUSION

The most remarked upon feature of the criminal justice system is its complexity. It is not one, but many things; it announces not one, but many goals. Its overarching purposes are instrumental and symbolic: to change the person (or social conditions) that made the wrong possible, and to announce that offending is wrong. The system announces goals of both individualised treatment of offenders *and* equal treatment of "like crimes". Specifically, one imperative is to fashion responses to individuals based on their circumstances and potential for reform (individual-based, crime prevention). This is joined with a second imperative, which is to punish like offences the same and in proportion to the harm (offence-based, desert). There are shifts over time in preferred punishment values, and conflict over values in any one time period.

Theories and philosophical debates about what legal process, justice, and punishment *ought to be* are a first step in understanding the criminal process. As important is understanding how justice *actually gets done*, that is, the discretionary decision making of professional groups, organisations, and individuals, who are guided by law and rules, but who also operate according to other criteria such as organisational efficiency, work group norms, bureaucratic and professional interests, and economic constraints. The agencies that form a *system* of criminal justice are loosely linked, not well co-ordinated. Agencies' aims and functions are in conflict, as are the overall system's values of efficiency and due process. Such conflict in values and aims both within and across the agencies of criminal justice, as well as among those in the wider society, means that justice is forever an elusive and contested ideal.

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QUESTIONS

1. Does discretion further the cause of justice, or does it lead to injustice?
2. Give examples of when the functions of the police, prosecution, courts, or corrections may be in conflict.
3. Are some acts inherently criminal? What differentiates a criminal from a non-criminal act?
4. What is the difference between people who are viewed as "non-guilty", "factually guilty", and "legally guilty"?
5. Should the primary focus of the criminal process be to apprehend and sanction as many "factually guilty" people as possible? Or should it be to make decisions according to legal principles and requirements, which may result in the release of "factually guilty" people?
6. Why are justice system innovations, such as rehabilitation in the 19th century and restorative justice in the 20th century, more likely to be tried first in juvenile than adult cases?
7. Is it possible to separate *the act* from *the actor* in responding to crime or in sentencing?
8. Give examples of the when ordinary citizens play an important role in responding to crime.
9. Analyse the ways in which the symbolic and utilitarian purposes of the criminal justice system are discussed in the news. Are certain crimes or lawbreakers subject to attention for symbolic rather than utilitarian reasons?

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USEFUL WEBSITES

www.law.gov.au/wotl.html
Window on the law website, which has links to individual States.

www.justiceaction.org.au
Reports on actions taken on behalf of incarcerated people

www.restorativejustice.org
US website on restorative justice

www.crj.anu.edu.au
Australian website on restorative justice

CHAPTER 13

POLICING AND LAW ENFORCEMENT

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KEY WORDS

- social control
- discretion
- police culture
- community policing
- accountability
- pluralisation

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INTRODUCTION

The police have been described as the "gate-keepers" of the criminal justice system: very few people find themselves within the system unless there has been some kind of police decision to arrest or summons that person. Much of what police do is society's "dirty work" — dealing with mentally ill, homeless, abusive or threatening persons. They possess coercive powers that can be used to do their work. In many cases what the police do is better described as *order maintenance* than law enforcement. In democratic societies, their role involves a continuous balancing act between the interests of community safety and those of individual liberty. This ensures public interest, scrutiny, and frequently, controversy, in what they do.

This chapter introduces students to a range of key concepts and practices within modern policing. These include a brief overview of Australian police forces and their numbers, an examination of the distinction between *police* and *policing* and the role of police in social control. An assessment of particular aspects of modern police practice, such as crime prevention, police powers and police discretion, police-community relations, and policing the police (the question of accountability) will be followed by a discussion of current developments influencing the future of police and policing in Australia.

POLICE IN AUSTRALIA - A SNAPSHOT

There are eight public police forces in Australia, principally organised along State and Territory lines. The six States have their own police forces, as does the Northern Territory. The Australian Federal Police (AFP), as its name suggests, is a federal police force, not unlike the United States Federal Bureau of Investigation. However, it also provides local policing services in the Australian Capital Territory (ACT). In general terms, the commissioners of police are accountable to their respective State or Territory Ministers and legislative bodies (parliaments); the Commissioner of the AFP reports to the Federal Minister of Justice and to Federal Parliament.

The largest police force is New South Wales (nearly 14,000 sworn officers). The smallest, Northern Territory, has just under 1,000 officers. In all, as at 30 June 2001, there were 44, 922 sworn police officers nationally (Australian Institute of Criminology 2001). Civilian staff are also employed in police departments. Men predominate in the police ranks across Australia, comprising approximately 80% of all sworn officers, though among the ranks of probationary and ordinary constables, women constitute up to one in three officers.

POLICE, POLICING AND SOCIAL CONTROL

A degree of social order, most people would accept, is necessary for the smooth functioning of human societies. In order to maintain order, societies pursue various forms of social control. Social control may be understood as "the organised ways in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable" (Cohen 1985, pp 1-2). Over the last two hundred years, most modern societies have come to rely heavily upon police forces for social control. Publicly funded, uniformed police forces are a relatively recent phenomenon. In England, the first public police force did not commence until 1829 in London. Until that time, social control by government had depended to a large extent upon a mixture of local constables, a few private police, and the occasional use of the army to put down riots and other public disorders. As societies grew in size and became more urban in nature, there was demand, especially from the middle classes, for specialised, trained forces of men to engage in preventive patrols. These new police were tasked to maintain order and deter crime as well as to undertake criminal investigations and enforce the law.

In effect, what occurred in the early 19th century in countries such as Britain and Australia was that "policing" was turned over to state institutions called "police". "Policing," as Reiner (1994, p 722) explains, is:

> "an aspect of social control processes which occurs universally in all social situations in which there is at least the potential for conflict, deviance, or disorder. It involves surveillance to discover actual or anticipated breaches, and the threat or mobilisation of sanctions to ensure the security of the social order. The order in question may be based on consensus, or conflict and oppression, or an ambiguous amalgam of the two, which is usually the case in modern societies."

He distinguishes "police" in this way:

> "While policing may be universal, the 'police' as a specialised body of people given the primary formal responsibility for the use of legitimate force to safeguard security is a feature of only relatively complex societies."

Reiner described the early modern police forces as "domestic missionaries", used by centralised states to "propagate and protect a dominant conception of peace and propriety throughout their territories" (1994, p 722). In Australia, the early police forces were used to subdue Aboriginal populations which resisted European colonisation, as well as to contain the perceived threat to good government from convicts and former convicts (Finnane 1994).

As the notion of "missionary" suggests, public acceptance of the police in Australia did not occur without some resistance and protest. In 1848, for example, police had to barricade themselves in the Port Adelaide police station from a group of attacking sailors, an episode which ended with a sailor dying from a police bayonet (Finnane 1994, p 27). Australian historian, Russell Ward, observed that:

> "It may be doubted whether the police force of any English speaking country, except Ireland, has ever been more thoroughly unpopular than were those of most Australian colonies in the last century." (Chappell & Wilson 1969, p 28).

THE POLICE ROLE

The early and continuing involvement of public police in order maintenance and crime prevention points to a persistent feature (and source of ongoing difficulty) for policing today. Put simply, what police need to do to prevent crime or to preserve order is often unclear, compared to circumstances when the law has been breached. For example, police can respond in a fairly straightforward manner if they encounter two youths damaging a bus shelter. The crime has already commenced by the time the police intervene. Police can, therefore, pursue their *law enforcement* function with little risk of being publicly challenged about whether a crime had occurred. But think of another situation — what should the police do if they see two youths walking in the street, one of whom is carrying a hammer? Preventive action in these circumstances runs the risk of selecting innocent persons who have no intention of committing a crime, and of offending them by doing so — in the case just described, one of the youths may be an apprentice carpenter on her way home from work.

Police face similar difficulties when confronted by what appears to be, or is arguably, a disorderly situation. When, for example, should the police intervene to stop a loud party from continuing to disrupt neighbourhood tranquility? When should the police take action to prevent a group drinking more alcohol in a public place? These decisions in practice are often very difficult as onlookers and participants will often see the same behaviour quite differently. As a result, there will be different views about what the police should do, or indeed not do. Racial, socio-economic, gender and other personal differences can also explain different perceptions. These situations require the police to exercise their discretion. Sometimes, even when an offence has occurred, the interests of preserving public order will lie in not arresting or prosecuting an offender. This might be the case, for instance, if otherwise law-abiding people, while publicly protesting against a government policy, happen to break the law in a relatively minor way, for example a road traffic law. More will be said about police discretion later. What emerges from this discussion though is that *much police work is political* in nature, that is,that police decisions to enforce the law or to maintain order in particular ways inevitably affect personal liberty, thus opening the door to conflict and disagreement about the use of police power.

Use of force

Many commentators (for example Bittner 1970; Manning 1977) see the capacity to use force against fellow citizens as the key characteristic of the police role. Police, like military personnel, are trained to use force in their work. Generally speaking, however, soldiers can only exercise force to defend the nation against outside aggression. By contrast, the police are granted the power by law to use force during peace time against fellow citizens. While actual force is uncommon in police-citizen contacts, most people would be aware that the police are trained, and able legally at times, to use force. This fact can contribute to a sense of fear or intimidation in some police encounters with citizens, even though no force is used (Settle 1990). The ability to use force, therefore, defines *police power* in real terms. It has also contributed to the mythology that the police are primarily crime fighters. Television shows and Hollywood movies have done a lot to emphasise the coercive, crime fighting image of police (Reiner 2000, p 170).

World Economic Forum protest, Melbourne
Source: Newspix

Police — force or service?

In place of crime fighting however, some senior police officers have sought to stress the *service* role of police (Avery 1981). Police serve by responding to public requests for assistance, as well as by aiding those they encounter in their daily work. As Bayley notes, "By and large, the people the police deal with are life's refugees" (1994, p 24). Often these people require help from other agencies to assist them in overcoming social or personal problems. The police can assist them by directing them to the appropriate agency (for example housing, drug rehabilitation, welfare payments). Aside from providing assistance, the service role, it is argued, helps the police to build positive relationships with the community. It would be difficult to imagine a police force that enjoys wide public support ("policing by consent") that did not provide a substantial service function.

Proactive and reactive policing

A significant influence on the role of police is the kind of demands made upon police by members of the public. Australians contact the police for a variety of reasons including: the reporting of crimes (40%); receiving of assistance (16%); the reporting of accidents (13%); or the reporting of suspicions (13%) (Australia 2002). More than 40% of police-citizen contacts are citizen initiated, in other words, someone rings up or flags down a police car, or goes to the station to report something. Reiss (1971) devised the term *reactive police work* to describe policing that responds to citizen requests for assistance. The other kind of policing he called *proactive police work*, which follows police initiated contact with citizens. The latter amounts to about 60% of police-citizen contacts. Approximately 80% of these contacts arise from random breath testing and traffic-related matters (Australia 2002).

As fans of *The Bill* will know, many citizen requests for "something to be done" are made today by telephone to police communication centres, which then prioritise calls and allocate police patrols. The fact that recent economic pressures upon police forces are encouraging fewer face-to-face police-citizen interactions on issues such as minor theft and even burglary does not detract from the relative importance of citizen initiative in defining what police do. Nor has it eliminated the widespread public expectation that the police are there to assist citizens on a wide range of matters, not just crime.

Crime prevention

As we saw earlier, crime prevention was an important objective in the formation of the early public police forces in England and elsewhere. Politicians today, by promising to create more police jobs, imply that police have a vital role to play in reducing crime. The question needs to be addressed: can the police successfully prevent crime?

The capacity of the police to affect crime rates has been widely linked to their capacity to deter would-be offenders by their presence on the streets. Interestingly, there is little evidence to suggest that putting more police officers on the streets *by itself* has a measurable impact on crime numbers. Indeed, more police can lead to more arrests, and thus to an increase in official crime statistics! George Kelling and his associates (1974) evaluated the effect of doubling the number of random police patrols in Kansas City (USA) in some areas and of reducing and even removing them altogether from other areas. Strikingly, they found no significant impact on the incidence of crime. However more recently, targeting "hot-spots" where there is an increased risk of serious crime, by using directed patrols and focusing on known recidivists, has shown more positive results both in the United States (Sherman et al 1997) and Australia (Ratcliffe 2001).

Two areas in which police effectiveness has been closely examined are domestic violence and drink-driving offences.

American criminologist Lawrence Sherman is somewhat pessimistic about the success of police strategies for controlling domestic violence, in particular, the use of mandatory arrest. Police can do less, he reports, than many victims' advocates and lawyers seek. The basic problem is that while minor domestic violence is relatively predictable, serious domestic violence, particularly homicide, is virtually unpredictable. Moreover, police interventions can sometimes aggravate subsequent levels of violence (Sherman 1992). While the reasons for this effect are complex, the findings point to the need to ensure that police interventions reduce, rather than promote, social harm. Police researchers are continuing to examine ways of doing this. A more recent finding reported by Sherman and his colleagues is that police arrests of domestic violence offenders can lead to a reduced recurrence of violence if police treat arrestees with courtesy and respect (Sherman et al 1997).

In relation to drink-driving, Australian criminologist Ross Homel has argued that police by themselves can do relatively little to reduce the number of offences:

> "There simply is no convincing evidence that the routine nostrums of the law and order lobby, such as increasing police numbers, putting more officers 'back on the beat', beefing up the number of patrols, or intensifying the surveillance of chronic or repeat offenders, will yield the benefits in increased public safety, which are claimed." (1994, p 32).

However, Homel found that the changes to police tactics, together with extensive advertising campaigns and improved community education, were able to have a significant impact on the number of drink-driving offences detected. This was largely due to what Homel calls "managed uncertainty" — setting out to create the belief in the minds of potential offenders that there was a substantial risk of detection and, therefore, of punishment. Homel concludes that:

> "police enforcement can achieve crime prevention objectives, but only if traditional reactive approaches focused on arrest and conviction are supplemented by (and in most cases made subordinate to) policies which make general deterrence or general prevention the primary goal" (1994, p 32).

Dialogue Box 13.1

"Zero-tolerance policing"
This idea achieved notoriety several years ago, due mainly to the reduction in reported crime levels in New York City in the early 1990s, which city officials and the New York police chief linked to a tougher approach to minor disorders in the streets. The zero-tolerance approach has been linked with Wilson and Kelling's (1982) "broken windows" hypothesis — that neighbourhoods descend into more serious crime when minor infractions (for example littering, graffiti) and incivilities (for example swearing, drinking in public) go unattended by police. Subsequently, there has been controversy over whether such a stricter approach to law enforcement (in effect, order maintenance via law enforcement) did in fact produce the reduction in crime levels claimed (Dixon 1998). A downside of the zero-tolerance approach, some observe, is the unfair targeting of already disadvantaged groups of individuals. On this view, zero-tolerance is a very narrowly focused version of *community policing* — see below.

LAW AND DISCRETION

Police and the law

The law is a key tool in police work (Dixon 1997). Police use the criminal law to preserve order as well as strictly enforcing it. The laws the police work with can be difficult to understand and apply, due to their ambiguity or complexity. The relationship between police and law is important for at least two reasons. First, law formally defines the scope of police powers, so the former is important to understanding the latter. Secondly, the law is central to police accountability — as officers of the law, police are obligated to uphold the law, and are liable to be punished when they act outside their lawful authority. It is possible, therefore, to construe the law's significance for police work in two senses:

- as *constraining*, keeping police actions within acceptable limits;
- as *enabling*, facilitating police actions in dealing with citizens.

The law must be enabling if police are to be able to react lawfully to a wide range of circumstances, to what Bittner summarised as "something that ought not to be happening about which someone had better do something now" (1970, p 30). The substantive criminal law (for example murder, theft, assault, disorderly behaviour) is not self-enforcing, but is rather a tool in the armoury of the police, along with the procedural laws dealing with search, seizure, arrest and so on. These rules, as Ericson points out (1982, p 91), "do … not in any sense determine apprehension, but simply make it possible". If a police officer decides that "something should be done" about a disorderly person in a shopping mall, she can use the law to arrest someone (procedural law) and to lay a charge against that person (substantive law). Sometimes a mere threat to do so is sufficient. Law is enabling of police work in both cases.

Police discretion

Discretion implies choice about how and when to act. "A police officer or police agency may be said to exercise police discretion whenever effective limits on his, her, or its power leave the officer or agency free to make choices among possible courses of action or inaction." (Klockars 1985, p 93) *Not taking action* can also be a form of discretion. Police discretion is undoubtedly a key ingredient of police power. Yet it would be wrong to conclude that it is unnecessary or that it is always undesirable. Lord Scarman noted:

> "The exercise of discretion lies at the heart of the policing function. It is undeniable that there is only one law for all: and it is right that this should be so. But it is equally well recognised that successful policing depends on the exercise of discretion in how the law is enforced. The good reputation of the police as a force depends upon the skill and judgment which policemen display in the particular circumstances of the cases and incidents which they are required to handle. Discretion is the art of suiting action to particular circumstances. It is a policeman's daily task." (1982, para 4.58).

Where then does police discretion come from? In part, it can be traced to the law itself. The law tends to be expressed in general terms, so that application to particular facts requires interpretation. What does Parliament intend to prohibit when it passes a law creating an offence of "disorderly conduct", for example? Police are required to interpret the laws they apply. Laws may conflict, overlap or simply delegate decision making to a police officer. For example, under the bail laws, police may grant bail or order detention in custody, depending on the circumstances. The exercise of discretion is not necessarily contrary to law and, as has been seen, is often permitted by law. Law, it must be said, is an imperfect guide to appropriate police behaviour. As Hogg and Hawker noted, "there are always, by definition, a number of possible ways in which a discretion may be exercised all of which will be equally lawful, but not all of which may be equally desirable."(1983, p 222) Ultimately, the person applying the law, the police officer, must choose between the range of legally permissible choices open to her or him in a particular set of circumstances, thus giving the law a practical meaning.

The circumstances under which police work, can also give rise to discretion. Limited resources can affect how the police decide to respond to a situation. Police may simply be overwhelmed by the number of offenders, say at a public demonstration, and thus choose not to enforce the law. Or, they may select only certain offenders for arrest and charging, as arresting and charging everyone who committed an offence would take up too much time. Here, discretion is attributable to real limits on personnel numbers and police time, not to the law itself. Policy directives from police chiefs and government to take a stronger position in relation to, for instance, drug offences also shape police discretion. Setting priorities inevitably means that some matters will get more attention than others. For example, the absence of strong public interest in enforcing particular laws (for example drinking in public places, underage consensual sex) may lead to police ignoring offences arising under those laws.

Police discretion is a particular feature of "front-line" police work. On the streets, officers must confront an almost unimaginable variety of situations, usually without supervision from senior police. In the US context, James Q Wilson has noted the irony of their situation:

> "the police department has the special property (shared with a few other organisations) that within it discretion increases as one moves down the hierarchy...the lowest-ranking police officer — the patrolman — has the greatest discretion and thus his behaviour is of greatest concern to the police administrator." (1968, pp 7-8)

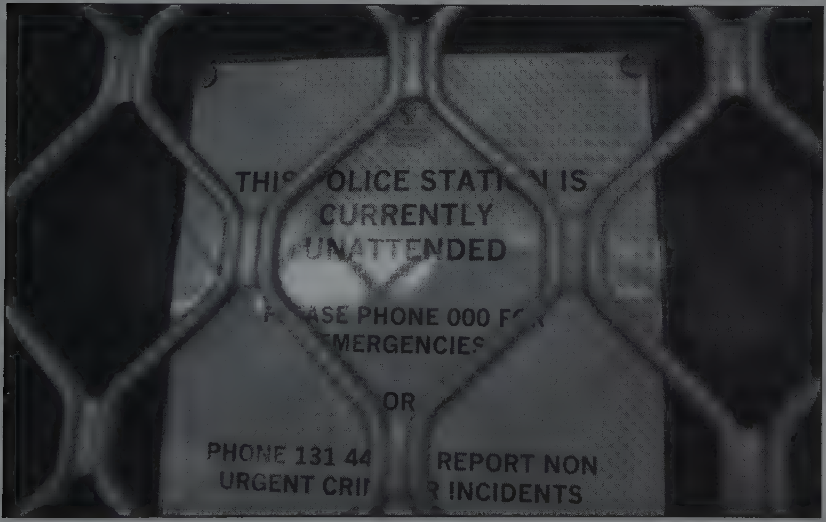
This fact raises questions about the effectiveness of managerial controls within police organisations and the issue of police accountability more generally. Wilson also pointed out that police forces as well as police officers can exercise discretion. Some police departments may adopt a more legalistic approach, while others may take a more flexible view towards the enforcement of the law. The history of police corruption in Australia certainly suggests that some Australian police forces have been far more inclined to *abuse* discretion at times than other police forces (for example Wood 1997, *Four Corners* 2001). This point corroborates Wilson's observation that discretion can be a systemic as well as individual characteristic in police work.

Finally, police discretion by its very nature, is differential in its impact — some people will be charged while others will not, some will be assisted by police while others will be neglected. Accountability is an important complement to police discretion. This is particularly so where individuals or groups feel they have been picked upon by police unfairly. Young people and indigenous people have often felt that police discretion has been misused against them. In some Aboriginal communities, this police practice has been described as "over-policing" (Cunneen 2001). By calling into question the appropriateness of the exercise of police discretion, these complaints give rise to questions about equality of police treatment and police respect for individual rights.

POLICE-COMMUNITY RELATIONS

In a complex, multicultural society, achieving "policing by consent" is no easy matter. Yet good police-community relations are needed if society is to avoid having models of policing premised upon public resentment towards police. Without public trust, police tend to feel alienated from the community and there is a greater risk of acting repressively towards citizens. The challenge for police and the community generally is to find ways of clearly communicating and understanding each other. This is especially needed in the case of those groups who have previously faced difficulties in relating well to police. For example, young people, Aborigines, and persons from ethnic minorities, have often had problems of this kind with police (White & Alder 1994).

Police work, by its very nature, makes harmonious relations with all citizens difficult, if not impossible. Resolving a family or neighbour dispute, for example, will rarely leave all parties feeling content with the outcome. In some cases, disgruntled citizens may see fit to formally complain about the police action taken. Police are sometimes accused of misjudging a situation by being too hasty, or of acting in a discriminatory fashion. In the "society of strangers" that many of us live in, police will often know little or nothing about those being policed, rendering sound judgment difficult. When that knowledge is not sought or is unavailable, there will be consequences, often negative, for how those being policed are treated by police officers.



The closed door at Patterson Police Station

Source: Newspix

Police–community relations suffer when police allow stereotypes to become substitutes for a more considered assessment of those they are dealing with. When these attitudes harden into unfounded prejudices towards particular groups as a whole, the issue becomes more serious. While in emergencies there will generally be little opportunity for considered judgment, nonetheless in such circumstances police risk damaging their relations with certain community groups if they fail to take the time to get to know members of these groups. This requires time and effort, and police, like other groups of workers, are tempted to cut corners, in this case by allowing existing stereotypes to substitute for real knowledge and communication. Recent experiences in New South Wales with Aboriginal, Asian and Middle Eastern communities provide some examples of the counter productive effects of stereotyping for police-community relations (Cunneen 2001).

Dialogue Box 13.2

Community Policing
This concept has become quite prevalent in accounts of modern policing. The word "community" undoubtedly has a generally positive ring to it. It suggests forms of policing based upon broad community support. However, the term has been used to describe a range of program initiatives. Neighbourhood Watch (NW) is a well known example. Under NW, citizens are encouraged to take basic security measures to protect their homes and property, and to keep an eye open for suspicious activities. It reflects the idea that the police acting alone cannot bring about a reduction in crime. Some scholars have pointed to the selective notion of "community" implicit in Community Policing programs, such as police community consultative committees and NW. It is claimed that these schemes are not representative of the community at large. Another criticism has been that police tend to dominate such schemes (James & Sutton 1993). Nonetheless, the ideal of "policing by consent" remains a key concept in liberal democracies. Some notion of "community policing" based on a genuine police–community partnership, therefore, remains a desirable objective.

POLICE CULTURE

The phrase "police culture" has been commonly used in recent years in efforts to explain behavioural and attitudinal problems within police organisations. This really started in Australia with the Fitzgerald Inquiry report (1989), which looked largely at the activities of the Queensland police force in the late 1980s. "Culture" is a term used to refer to the atmosphere within a group or organisation that contributes to the development and maintenance of particular attitudes, values, and practices. "Police culture," therefore, has come to refer to values such as loyalty to one's fellow officers, an emphasis on physical toughness, and a preference for action over talk. These are not necessarily bad qualities in police work (Goldsmith 1990).

On the negative side, "police culture" also can refer to specific practices such as not dobbing in one's mates, fabricating statements of suspects ("verballing"), and lying under oath in court to "cover up" inappropriate police behaviour (Goldsmith 2000). It is also used to explain persistent patterns of police racial and ethnic prejudice. The Royal Commission into Aboriginal Deaths in Custody, for example, referred to "the way in which particular stereotypes are passed on from generation to generation within the [police] culture, so that they are unquestioningly accepted as 'knowledge' or 'common sense'" (Australia 1991, p 211). Translated into action, the police culture permitted, even encouraged, "the use of roughness, violence, hurtful language and the differential application of discretions in many matters, including the relative use of the 'blind eye', the caution, the summons and the power of arrest" (Australia 1991, pp 211-212).

In short, police culture has been linked to a preparedness to subvert the law by acting according to an informal "code" shared by police officers. Fitzgerald described this as a "code which provides for different approach to the enforcement of the law in relation to officers, and insists that, in conflicts between the law and the code, the code prevails". "The practical exercise of police authority, in adherence to such a code, effectively places police officers beyond the law" (1989, p 200). How police can be held accountable to law in spite of police culture is an important question considered later in this chapter (Goldsmith 1990). Finally, it should be noted that any such "culture" does not exist in a vacuum. Blaming the culture alone for problems in policing can deflect attention from features of the internal and external environment that can also contribute to police impropriety (for example poor supervision and management, unenforceable or unpopular laws) (Chan 1996). We have recently seen in Australia, for instance, the powerful temptations provided to police officers through access to illicit drugs (for example *Four Corners* 2001, Wood 1997).

POLICING THE POLICE

As police have considerable powers over many aspects of our daily life, as well as the capacity to resort to lethal force, ensuring that the police act appropriately is crucial. The police need to be held *accountable* for the exercise of their powers. "Accountability" refers to a set of requirements upon an individual or organisation (in this case, the police) to explain and justify the exercise of its authority in particular cases. Where no adequate explanation exists, accountability demands that the wrongful conduct be dealt with appropriately, by punishing the wrongdoer, by making administrative changes (for example to supervision arrangements), or perhaps by a combination of the two. But who exactly has had, and who should have, the responsibility for policing the police?

Police officers have historically been held accountable as individuals to the law (Walker 2000, pp 44-67). They are thus officers of the law in two senses — enforcing it against others, and being accountable to the law themselves. This means that police officers may be held accountable for their actions under the civil and criminal law. They can be sued civilly, say, for wrongful arrest or assault, and prosecuted for offences such as theft, assault, perjury, fraud, and even murder. Police officers are also *administratively accountable*, being required to follow lawful directions of their superior officers and being liable for discipline should they not do so or otherwise breach internal rules of the police organisation.

Police organisations are also required by law to be accountable to government. Police commissioners have obligations under statute and under their employment contracts to report to their Minister at stated times and when requested to do so. They must also ensure that annual reports are tabled in parliament. In some jurisdictions, the government of the day can issue specific directions to the police commissioner, but they must be tabled in Parliament so as to be a matter of public record. Police organisations also administer large budgets that also must be accounted for according to standards of financial reporting.

It is sometimes argued, therefore, that the police are highly accountable, more so than many other professions or occupations (Lauer 1994). This claim needs to be considered however, in the context of the unique position and power of the police compared to other agencies and jobs. We must also consider whether the existing means of accountability actually work. Critics have disputed the claim, alleging that while in theory the police are highly accountable, the reality is often different (Goldsmith 1991). It is pointed out that few police officers are successfully prosecuted for crimes, that it is slow, expensive, and uncertain to sue police in the civil courts, and that internal administrative channels do not offer effective means for responding to complaints of mistreatment from citizens (Goldsmith 2000). Police culture is often seen to frustrate efforts to hold the police accountable. Internal affairs units of the police have been widely criticised for being too sympathetic to police accused of misconduct. Police whistleblowers have often been victimised, rather than protected, by their own organisations (Goldsmith 2001).

A strong chorus of police observers has recently argued that external (that is non-police) mechanisms are needed to enhance public confidence in police accountability (Bayley 1991; Goldsmith 1991; Goldsmith &

Lewis 2000). This has coincided with a relative decline in public confidence in police (Bayley 1994; Goldsmith 1991). The most significant development in response to this position has been the creation and proliferation of the office of *police ombudsman.* This function has been known under a variety of names, including Ombudsman (Victoria, New South Wales, Tasmania, Northern Territory, Western Australia), Police Complaints Authority (South Australia), and the Crime and Misconduct Commission (formerly, the Criminal Justice Commission) (Queensland) (see Lewis & Prenzler 1999). There are also anti-corruption agencies that deal with some of these matters — the New South Wales Police Integrity Commission is an example. These agencies have been given powers to receive citizens' complaints and to review police internal investigations into the complaints or to take over the investigations themselves in some cases. Occasionally, they may conduct their own investigations from the moment the complaint is received. These agencies offer the aggrieved citizen a channel outside the police organisation to pursue their complaint without fear that police self-interest will undermine the investigation of that complaint.

NEW DIRECTIONS

Three particular themes seem likely to play a large part in shaping the future of police and policing in Australia. These are *globalisation*, *pluralisation,* and *new technologies*. Each seems likely to change, in fundamental ways, how police work is organised, administered and put into practice.

Globalisation, in the form of movements of people, goods, and information across state borders, facilitated by mass transportation capabilities and new communication technologies, has meant that challenges of crime and disorder can enter a country like Australia from other countries by plane, ship, or via the internet. Police increasingly must confront problems associated with illegal immigrants and asylum seekers, the illicit arms and drugs trades, financial crimes such as money laundering, and internet related offences (see Chapters 10 and 11). In order to tackle these challenges, police forces have had to strengthen and extend their overseas networks that provide intelligence and other forms of co-operation (for example, foreign police agencies such as Interpol). They have also had to learn to liaise and work more closely with other domestic law enforcement agencies (for example, the National Crime Authority, the Australian Taxation Office, the Australian Bureau of Criminal Intelligence, police forces in other States). Police have also had to confront the crime related issues posed by new technologies — money laundering, cyberfraud, cyberterrorism, and so on (see Chapter 11). The new skills and technologies required are often difficult and expensive to acquire.

Pluralisation points to the fact that policing is now less the exclusive or particular responsibility of public police forces than it was 20 years ago (Johnston 2000; Bayley & Shearing 1996). New specialised government law enforcement agencies (for example, the National Crime Authority) have developed in response to the increased sophistication of much criminal activity. Outside government, the private sector and the community itself are increasingly becoming involved in policing activities. Private security personnel significantly outnumber the number of sworn police officers (Prenzler & Sarre 1998). Businesses and private homes spend more on security services and devices than before. Local councils and some residents are hiring private security patrols to provide additional patrol services to designated areas (Scott 2002). Civilians are increasingly becoming involved in new self-policing ventures and partnerships with the police. NW (discussed above) is a kind of self-policing while "community policing" has come to imply partnerships of this kind. These moves partly reflect acceptance of the limitations of the police in reducing crime. Policing, in other words, depends on a variety of participants and a diminished state responsibility for "front-line" policing.

New technologies will continue to have an impact on how policing is done. In recent times, the advent of closed circuit television (CCTV) has led to more "surveillance from afar," often by private sector personnel, permitting police deployment to be concentrated in areas of particular need. Scientific advances associated with DNA testing and identification have led to new police powers for taking tissue and blood samples for forensic analysis. These powers are widely seen as intrusive, yet at the same time, as offering new, more certain methods for identifying offenders, especially in cases of serious and serial crimes. New methods for storing scientific data of this kind have led to the establishment of new centralised databanks, whereby law enforcement officials from around the country (or indeed, around the world), can share information that may lead to the identification and interception of offenders. New coercive, non-lethal technologies (for example capsicum spray, Taser guns) are also becoming available, offering new measures for dealing with threatened or actual violence. We can expect to see more use of these devices in the future in dealing with those deemed to be disordered, disorderly, or otherwise disruptive in our society.

CONCLUSION

Policing was never exclusively in the hands of the police. In the future, it seems less likely to be so than it has been over the last two hundred years. Nor has police work been solely engaged with crime. Preserving order has always been fundamental to the tasks of policing. The law plays an important, but limited part in influencing how police work gets done – external pressures as well as internal characteristics of the police organisation also play their part. Debates about police powers and practices will continue to address and incorporate new technological and scientific developments, as well as take account of changing community fears of crime and disorder. As citizens, we will need to ensure that policing is not unnecessarily intrusive or oppressive, and that it is subject to appropriate controls within the police organisation, as well as by government and the community.

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QUESTIONS

1. Are police forces an inevitable feature of societies? How has the structure and organisation of policing changed since 1800?
2. What different roles do police play?
3. What is police discretion? Where does it come from? Is it inevitable?
4. What are some features of police culture? How do they influence what police do?
5. What are some reasons for *good*, and *bad*, relations between police and the community?
6. How do we seek to hold the police accountable?
7. How will police forces differ from today in the year 2101?
8. Locate the website for your State or Territory police force. Look for the mission statement or statement of values. How would you sum up their current philosophy and priorities as an organisation?

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www.aic.gov.au/policing/
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www.cmc.qld.gov.au/netscape/INDEX.html
Queensland Crime and Misconduct Commission

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CHAPTER 14

THE CRIMINAL PROCESS AND SENTENCING

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KEY WORDS

- arrest
- criminal
- illusion
- investigative
- mandatory penalties
- mitigating
- plea
- plea bargaining
- police powers
- right
- sentencing
- tariffs

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Introduction

This chapter considers some of the major issues in the criminal process from a suspect's initial encounter with the criminal justice system, to trial and sentencing. The focus is on the nature and modus operandi of key criminal justice institutions and procedures. Sequentially, the criminal process falls into three broad stages – the investigative stage, the prosecutorial stage which includes trials of guilt, and the sentencing stage. Particular attention is paid to issues relating to the fairness and legitimacy of the criminal process in practice, the rights and obligations of those subjected to or working within it and its effectiveness in meeting its social objectives of law enforcement and crime management. Figure 14.1 below gives a general view of the criminal justice process which is described in detail in the discussion that follows.

INVESTIGATIVE PROCESSES

For the majority of criminal cases, what occurs in the investigative stage of the criminal process determines their ultimate outcome. The vast majority of defendants plead guilty to the charges laid against them. Trials of guilt occur in only a minority of cases. Yet what occurs in the pre-trial stage of the criminal process to produce those outcomes remains largely hidden from public and judicial scrutiny.

Induction into the criminal justice system

A large proportion of suspects (at varying rates in different jurisdictions but generally between 25%–50%, though as high as 80% in some jurisdictions) enter the criminal justice system as a result of being arrested. The principal alternative method of securing suspects' entry into the system is by means of summons (a court-issued direction), that requires their appearance in court on a specified date to answer notified charges. Proceeding against a person by way of summons is much less intrusive than doing so by means of arrest since no physical apprehension and restraint is involved in the summons process.

Arrest in the investigative process

The common law authorises an arrest only where there are reasonable grounds to believe that the suspect has committed or is committing an arrestable offence. This means that the arrest process cannot legitimately be used to facilitate the investigation of crimes by, for example, enabling the detention of suspects for questioning. This aspect of the law has been modified in recent decades in the majority of Australian jurisdictions by statutory authorisation of police interrogation of arrested suspects within defined time limits. While arrestees may be questioned by the police, they are under no obligation to divulge any information to them. Once the

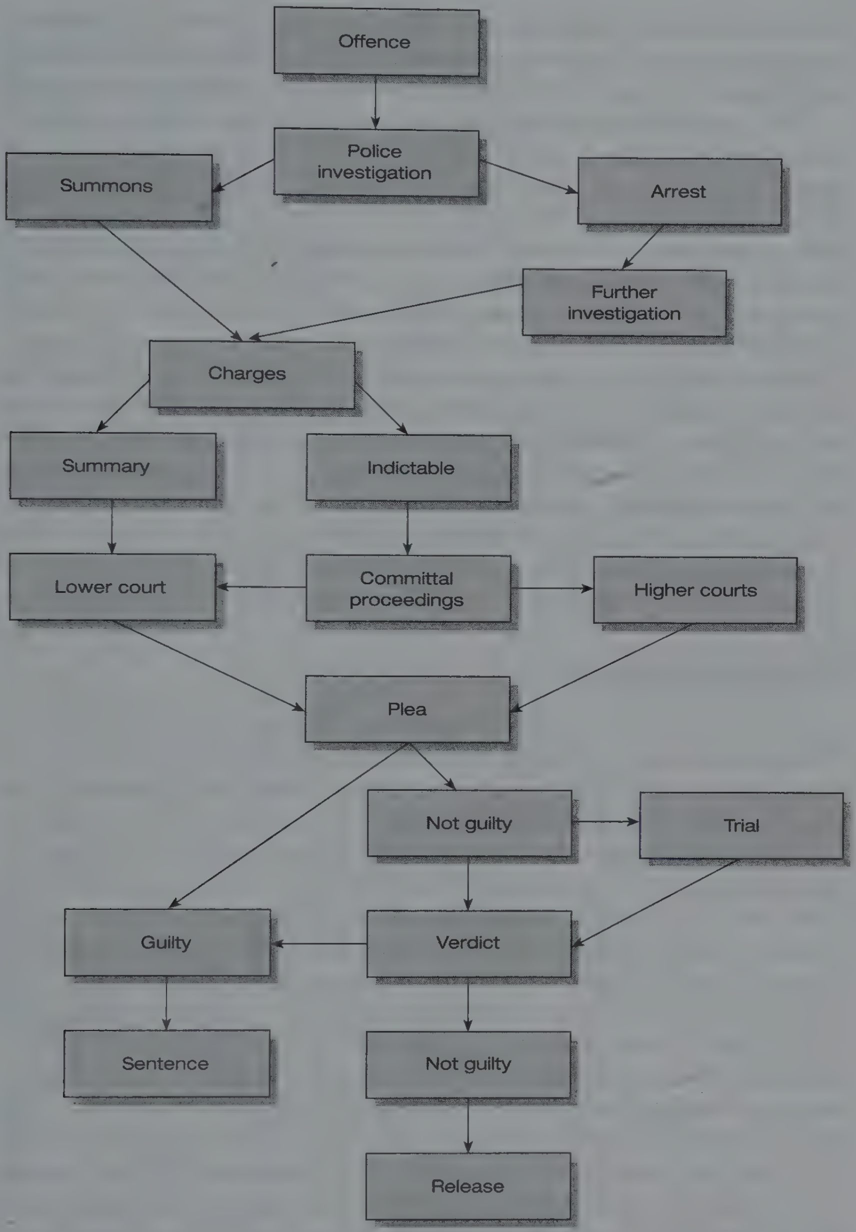
Offence
Police investigation
Summons
Arrest
Further investigation
Charges
Summary
Indictable
Lower court
Committal proceedings
Higher courts
Plea
Not guilty
Trial
Guilty
Verdict
Sentence
Not guilty
Release

Figure 14.1 *Flow chart of the criminal justice process*

statutory time period during which a suspect can be detained following an arrest has expired he or she must be charged and released on police bail or taken before a magistrate to have the question of bail determined. If the police detain a suspect beyond the statutorily authorised time limits, the arrest becomes unlawful and any evidence obtained by the police during the period of unlawful detention may be excluded at a subsequent trial. The police may also be liable for assault by unlawful imprisonment.

The power to question suspects is subject to certain statutory safeguards and duties, specifically, the obligation to inform arrestees of their right to remain silent and of their right to communicate with a relative, friend and legal practitioner and to have access, where relevant, to an interpreter. A further important safeguard in most legislative regimes is the requirement that, to be admissible in evidence at trial, confessions made during police interviews must be recorded on audio-tape or, in some jurisdictions, on video-tape.

Other investigative powers that are activated by the arrest process include powers to photograph, search, fingerprint and take prints and impressions of other parts of the body and the power to obtain forensic samples from suspects, including blood and saliva samples, hair and nail clippings, swabs and body scrapings. These powers are subject to statutory safeguards. For example, some of the more intrusive of the investigative powers, such as the power to conduct cavity searches of suspects, may only be conducted with the suspect's consent or with the authorisation of a magistrate.

Right to remain silent

A suspect who is questioned by the police has a right to remain silent. However, research has shown that this right is exercised in relatively few cases (Stevenson 1982). The majority of suspects who are questioned make incriminating statements to the police (Stevenson 1982). This has prompted some criminal justice analysts to the view that the right to remain silent serves a symbolic rather than a practical function (Ashworth 1998, pp 96-130; Sanders 1997, pp 1062-7). Many factors in the interrogation process combine to produce confessions. These range from suspects' genuine desire to unburden themselves to subtle and not-so-subtle pressures to confess applied by the police.

The major concern in this area has been that police may use improper methods to obtain admissions including physical force, intimidation, improper inducements and the fabrication of suspects' statements. This last practice is called "verballing" and has been recognised to be so pervasive and problematic as to warrant the enactment of law reforms requiring the electronic recording of all police interviews of suspects (see, for example, the Fitzgerald Commission of Inquiry 1989, pp 206-207 and the Law Reform Commission (Cth) 1975, paras 154ff). However, electronic recording generally applies only to serious or indictable offences.

Confessional evidence is a pivotal determinant of case outcomes. We know from Australian and British studies that decisions to plead guilty are influenced by the nature of confessional evidence against the defendant (Stevenson 1982; McConville et al 1991). The significance of this is obvious when it is remembered that the vast majority of defendants plead guilty. We also know that confessional evidence is of major importance in securing convictions at trials. Guilty verdicts are more likely where the Crown adduces evidence of confessions or admissions made by defendants (Stevenson 1982; Henning, 2000; Heenan & McKelvie 1997).

Investigative powers without arrest

Many coercive investigative powers of the police do not only arise upon the arrest of suspects but may be exercised independently, often in relation to what is called street policing. For example, legislation in all Australian jurisdictions empowers the police to stop and search members of the public and their motor vehicles for particular items such as stolen property, drugs, concealed firearms and other offensive weapons. Recently, some legislative regimes have significantly extended police powers to obtain forensic samples from suspects who are not under arrest and whom the police could not lawfully arrest because they lack a sufficient legal foundation for doing so. For example, the Commonwealth *Crimes Act* 1914 and the Tasmanian *Forensic Procedures Act* 2000 empower police to take saliva samples and samples by buccal swab (a swab from inside the cheek) from suspects on the order of police officers of or above the rank of Inspector. Probably the most familiar of the coercive police powers that exist independently of any arrest power is the power to require motorists to submit to a breath test.

One of the principal criticisms levelled at the law relating to police investigative powers is that it is inaccessible and incoherent. It differs from jurisdiction to jurisdiction and is found in a plethora of statutory provisions and regulations as well as, in some jurisdictions, in the common law. This level of inaccessibility and uncertainty has implications for the abuse of police powers and for the practical exercise by suspects of their rights. These problems are particularly evident where detention by the police is concerned.

The illusion of citizens' rights

Detention in police custody clearly involves a significant incursion into the personal liberty and rights of citizens. The gravity of and need to control state incursions into the liberty of citizens is recognised by Article 9 of the *International Covenant on Civil and Political Rights* which provides that, "Everyone has the right to liberty and security of person" and that "no one shall be subjected to arbitrary arrest or detention". Article 9 further provides that deprivation of liberty is authorised only on grounds established by law. The common law, or at least the rhetoric of the common law, and statute also attach primary significance to personal liberty and have sought to place strict limitations on police powers of detention and arrest. However, the extent of real protection provided by these legal restrictions on police powers is open to question.

Principal among the devices deployed by law enforcement agencies to evade the legal obligations attached to arrest is the process of so-called "consensual policing". In essence this involves relying on the (usually fictional) voluntary co-operation of suspects in "assisting the police with their inquiries". Because consensual co-operation with the police does not involve an arrest, the time limitations on questioning and the rights of and police duties with respect to arrestees (necessity for cautions, provision of access to a lawyer, duties relating to bail and so on) do not arise (Aronson & Hunter 1998, pp 219-225).

Dialogue Box 14.1

Suspects' voluntary co-operation may be achieved by means of various disincentives for non-co-operation such as reliance upon suspects' implicit beliefs that things will only be made stickier for them if they fail to co-operate or that non-co-operation would be futile or is just not a realistic option in any event. This attitude is seen very clearly in the following extract from an exchange that occurred during the cross-examination on the voir dire of one defendant in the case *R v S&J* (1983) 32 SASR 186. The central issue in this case was whether the two defendants, both young Aboriginal men, were under arrest at the time they made admissions to the police in relation to breaking and entering offences. Their belief, based on past contact with the police, was that they had no option but to accompany the police. Nevertheless, the trial judge and the South Australian Court of Appeal, by a majority of two to one, accepted the police contention that the defendants had not been arrested, that they had agreed to accompany the police voluntarily and to assist them in their inquiries.

Q "If a police officer said to you 'You are not under arrest' is it your understanding you have a choice whether to accompany him or not?"

A "Yes, but it usually happens that if you turn away and walk away they usually say, 'Hey, come here, come with us.' You have got no choice really."

The process of consensual policing is assisted by the fact that it can be difficult in practice to determine whether an arrest has actually occurred. Many suspects are confused about their arrest status, as the above extract shows. Police may also exploit loopholes in the law to avoid its constraints. For example, they may arrest suspects at times when the courts are not sitting in order to maximise the time during which they can conduct interrogations.[1] They may even ignore the law entirely, knowing that they run only a slim risk that their conduct will be subjected to judicial scrutiny or penalty (Dixon 1994, 1997).

Some analysts have characterised the criminal investigation process as representing a balance between the need to control crime on the one hand and, on the other, the need to ensure that those subject to criminal investigation are accorded "due process of law" (Packer 1968; see above, Chapter 12). Clearly, police practices like those noted here subvert any such constraints and balances in the law. Empirical research also suggests that such practices remain pervasive despite legislative attempts to curb them (Dixon 1997). This has led commentators like McBarnet (1981) to conclude that, in fact, the law not only tolerates but also licenses their use, depending upon them to achieve its crime control objectives. She argues that, "Deviation from the rhetoric of legality and justice is institutionalised within the law itself" (1981, p 156). This suggests that the law's primary commitment is to the control of crime even at the expense of civil liberties and due process.

PROSECUTORIAL PROCESSES

Pre-trial prosecutorial processes

Once charges are laid against a suspect, the case moves from the investigative to the prosecutorial stage of the criminal process.

Mode of trial

The choice of charge dictates which court has original jurisdiction to deal with the case. "Original jurisdiction" means the jurisdiction to conduct the initial trial of the case.

The criminal court hierarchy consists basically of two levels of court: the lower courts and the higher courts. At the higher court level in most Australian States there is a further division between the District Courts (called County Courts in Victoria) and the Supreme Courts. The District Courts may appropriately be described as occupying an intermediate level in the court hierarchy, though they have largely concurrent original jurisdiction with the Supreme Courts. In Tasmania and the Territories, this intermediate level of court does not exist and the higher courts are comprised solely of the Supreme Courts. The percentage of cases dealt with in each level of court is set out in the diagram below (Australian Institute of Criminology 2000)

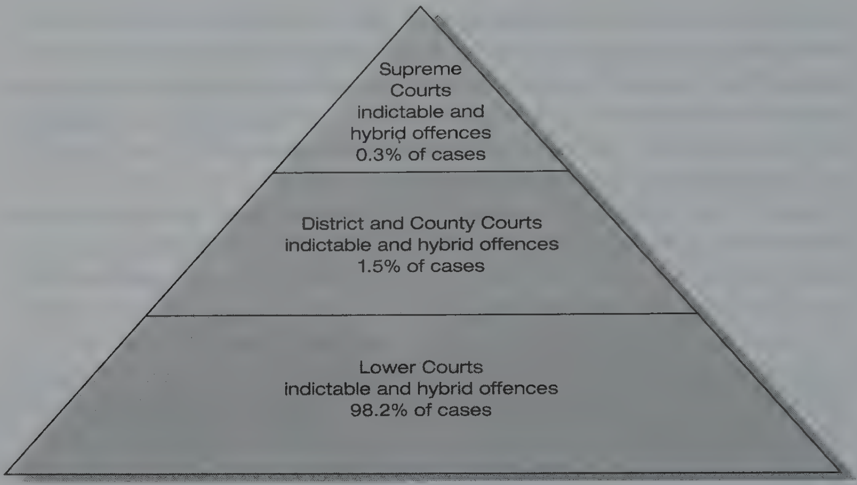

Figure 14.2 *Court hierarchy: Percentage of cases located in each level of court for 1998–1999*

Crimes fall into three categories:

- offences triable summarily before a magistrate (summary offences);
- offences triable on indictment before a judge and jury (indictable offences);
- offences triable either before a magistrate or before a judge and jury (hybrid offences).

Summary offences cover a wide range of criminal behaviour of varying degrees of seriousness and include such matters as traffic offences, public disturbances, offensive behaviour, theft and various forms of assault. Usually, however, summary offences involve relatively minor forms of criminal behaviour and carry circumscribed penalties of substantially lower severity than are available for indictable offences. *Indictable offences* comprise the most serious forms of criminal conduct such as murder, unlawful wounding, serious sexual offences, treason, arson and significant crimes of dishonesty. Most *hybrid offences* are indictable offences that may be dealt with summarily, that is, by a magistrate or by a judge sitting without a jury. They generally include less serious indictable offences like property offences and offences of dishonesty involving relatively small amounts of money.

The courts that deal with summary offences and the bulk of hybrid offences are generically known as the lower courts, but are also referred to as magistrates courts, courts of petty sessions, police courts and, in New South Wales, local courts. These courts handle over 90% of criminal cases. The nature of the proceedings in these courts is dictated by requirements of efficiency imposed by the sheer volume of cases they handle. Accordingly, their proceedings do not conform to traditional images of common law trials. For example, the dictates of efficiency have dispensed with the jury in the lower courts. Cases are determined by magistrates alone who exercise jurisdiction over questions of law and questions of fact. Neither they nor lawyers wear robes and wigs and proceedings tend to be conducted at a hectic pace with less formality and ritual than is observed in the higher courts.

The District and Supreme Courts are presided over by judges whose responsibility is primarily to determine questions of law. Where offenders have pleaded not guilty judges sit with juries whose task it is to determine questions of fact and whether the defendant is guilty or not guilty. District Courts have broad jurisdiction to deal with indictable offences. The Supreme Courts deal with the most serious charges like murder, attempted murder, manslaughter, the most serious sexual offences, and major conspiracy and drug offences. In those jurisdictions without the intermediate level of court, the Supreme Courts deal with all indictable offences except hybrid offences triable in the lower courts.

Proceedings in the District and Supreme Courts are characterised by a more marked observance of ritual and ceremony. Differences like these led McBarnet (1981) to distinguish "two tiers of justice" in our court system constituted by a species of "rough justice" provided in the lower courts and by something more akin to "real justice" in the higher courts. McBarnet argues that in the higher courts the "ideology of justice is put on display" (1981, p 153) but that this display differs markedly from the reality of justice applied in the majority of cases, those dealt with in the lower courts. What we find there is a system "deliberately structured in defiance of the ideology of justice [and] concerned less with subtle ideological messages than with direct control" (McBarnet 1981, p 153). According to this argument, the quality of justice provided in the lower courts is inferior to that provided in the higher courts. Concerns about this denial of due process are increased by the fact that the jurisdiction of the lower courts has expanded enormously in recent decades to include many serious offences.

Roles and duties of participants in the pre-trial prosecutorial process

In all cases the police initially determine what charges are laid against a defendant and for matters dealt with in the lower courts the final determination of charges remains with them. The police also generally have responsibility for prosecuting charges in the lower courts.[2] Specialised prosecution authorities, called the Office of the Director of Public Prosecutions (DPP), have been established in all Australian jurisdictions in recent decades to prosecute indictable offences in the higher courts. In the cases they conduct, they have authority to review and alter charges laid by the police. The DPP and police prosecutors represent the State, (called "the Crown"), in criminal proceedings. They do not represent the victim. The victim, in fact, has the status of a witness in criminal cases and is not a party in the proceedings.

Prosecutors have duties to the court and to the defence. At the pre-trial stage, prosecutors specify the charges against the accused and advise the defendant of the Crown evidence. In addition, the Crown must disclose any evidence which might be useful to the defence case. This ensures that the defendant knows precisely what case he or she is required to meet. Pre-trial disclosure of the Crown case is also achieved where indictable offences triable in the higher courts are concerned by means of committal proceedings. A *committal proceeding* is a preliminary hearing of the prosecution case before a magistrate to determine whether or not it should proceed to trial. Prosecutors' conduct of cases is governed in all jurisdictions by published State and Commonwealth DPP Guidelines, by professional rules of practice and by case law.

Unlike the prosecution, the defendant has traditionally been under no obligation to disclose her or his case prior to trial. One statutory exception to this is the duty to disclose an alibi defence. In recent years, however, there have been further moves towards requiring the defence to reveal its case or key components of its case before trial (Aronson 1992). The argument is that such a process would expedite cases and reduce the workload of the prosecution by allowing them to avoid issues that are not in dispute. Those who oppose such a development argue that it would abrogate the defendant's right to remain silent and would also tend to displace the onus of proof which rests with the Crown and requires the Crown to prove its case beyond reasonable doubt.

Plea bargaining: constructing the guilty plea

Prosecuting agencies enjoy wide discretion in determining whether and what charges to prosecute. This opens the way to plea bargaining. "Plea bargaining" is the term applied to negotiations between the prosecution/ police and the defendant whose aim is to achieve pleas of guilty in exchange for some benefit with respect to the charges laid or sentence. *Charge bargaining*, the entry of guilty pleas in exchange for concessions in relation to charges, is the most common form of plea bargaining in Australia. It can take many forms including pleading guilty conditional upon the Crown:

- reducing the existing charge to a lesser offence;
- reducing the number of charges;
- undertaking not to proceed with other outstanding charges.

From the state's point of view, charge bargaining has the benefit of avoiding the need for, and vagaries and expense of, a trial. The advantage to the defendant is that it results in fewer or lesser charges and, therefore, in a potentially reduced sentence.

The problem with plea bargaining is that innocent defendants may be induced to plead guilty as a result of undue pressure or because they regard as hopeless any attempt to challenge the prosecution case. Further, plea bargaining can result in sloppy prosecution and investigation practices and in overcharging. The lack of transparency and accountability in the process is also of major concern, since it provides the conditions for abuses to occur (Mack & Roach Anleu 1998). For all these reasons plea bargaining has the potential to reduce public confidence in the administration of justice. This probably explains why, for many years, its existence was denied by the legal profession and criminal justice agencies (Baldwin & McConville 1978). However, recognition that plea bargaining is both institutionalised in the system and necessary to its efficient operation has led to attempts in some jurisdictions to regulate its operation. To this effect DPP guidelines now specifically address issues in plea bargaining.

Because the principal justification for plea bargaining is that it is essential to the efficient administration of the criminal justice system it represents an obvious instance of the subjugation of due process considerations to the imperatives of crime control.

Source: Courts Administration Authority South Australia website (www.courts.sa.gov.au)

Criminal Trials

Criminal trials (called "hearings" in the lower courts) are essentially accusatorial in nature. They provide a forum for defendants to defend themselves against allegations that they are guilty of criminal conduct. Australian criminal trials are based on the adversarial model. This means that the parties, that is, the prosecution and the defence, determine the issues in the case and the evidence that will be adduced in relation to them. The judge has the role of an impartial supervisor in this process. It is her or his task to ensure that the procedural and evidentiary rules governing criminal trials are observed and to ensure the trial is conducted in a manner that is fair to the defendant. He or she rules upon the admissibility of evidence, determines the manner in which particular evidence is to be presented, controls the conduct of the parties in examining and cross-examining witnesses and guides the jury in relation to the applicable law and the use of evidence adduced. The judge does not have an investigative or inquisitorial role and does not take part in the dispute other than "to hold the balance between the contending parties" (*Whitehorn* (1983) 152 CLR 657 at 682 per Dawson J).

The role of the prosecutor is to present a "precisely formulated case" and to present evidence in support of it (*Alister* (1984) 154 CLR 404 per Murphy J). In doing so the prosecutor must act fairly and in a detached manner. It is not her or his responsibility to secure a conviction. The defendant has the right to remain silent and in most situations is not required to prove anything. With the exception of rare instances the responsibility in relation to proof rests with the prosecution and must be discharged to the level of "beyond reasonable doubt".

Fairness in the trial process

A fundamental principle governing the conduct of criminal trials is that of fairness. In *Dietrich* (1992) 177 CLR 292 at 299 Mason CJ and McHugh J stated, "The right of an accused to receive a fair trial according to law is a fundamental element of our criminal justice system." Recognition of the fundamental nature of this principle is also found in Article 14 of the *International Covenant on Civil and Political Rights* which provides that those who are charged with a criminal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. Fairness serves a legitimating function in the criminal justice context by maintaining a balance between the state and citizen and in maintaining public confidence in the administration of justice (Ashworth 1996).

The right to a fair trial is embodied in a range of rules of law and practice whose dual purpose is to minimise the risk of innocent people being convicted and to preserve the appearance of justice not only being done but being seen to be done. Principal among these rules are the presumption of innocence, the standard and burden of proof, the right to remain silent and various rules relating to the admissibility of evidence and its discretionary exclusion. Fairness, however, is a slippery concept and can mean and require different things in different contexts. Its interpretation is also subject to financial and administrative constraints. For example, while it may seem that fairness in the criminal trial context should require that all offenders be tried before a judge and jury, this is clearly impractical and does not occur. The so-called fundamental right to a fair trial is, in fact, a qualified right. Even in the trial context, we see notions of due process subject to demands of administrative efficiency.

THE SENTENCING PROCESS

The prosecutor's role on sentence and the plea in mitigation

It is not the prosecutor's role to obtain the most severe sentence possible. He or she must act fairly and assist the court. In the case of a guilty plea the role of the prosecutor is to present a brief statement of facts describing the circumstances of the offence and perhaps the manner in which the offender was apprehended and responded to questioning. This will not be necessary in the case of verdict or finding of guilty because the judge or magistrate will have heard the facts. The prosecution may direct the court's attention to facts, which it is alleged are aggravating, and if the offender has a criminal record, a list of prior convictions will be provided. It is now common practice, in cases such as sexual assault, for victim impact statements (VIS) to be provided to the court to enable the victim to have the full impact and effects of the crime made known to the court (see below, Chapter 18).

After the prosecution's address on sentence, the defendant has the right to make a plea in mitigation. If unrepresented the defendant must be made aware of this right and a failure by the court to give this opportunity is regarded as a failure to comply with basic principles of natural justice. If the defendant is represented, it is the duty of defence counsel to seek the most lenient outcome: counsel should challenge any inaccurate assertions in the prosecution's statement of facts; highlight *mitigating factors*; refer to the background and characteristics of the offender and the suitability of possible sentences; and perhaps even make specific suggestions on sentence. In some cases, counsel may request pre-sentence reports or the court itself may request one. Normally these reports are prepared by probation or community corrections officers.

Sentencing Discretion

Having determined the relevant facts relating to the offence and the offender, the sentencer can proceed to impose sentence. In deciding upon sentence, judges and magistrates have a broad discretion. Judicial discretion has been a characteristic feature of sentencing for the last one hundred years and the judiciary has vigorously defended it. Maximum discretion, they argue, should be left to the courts, and any restrictions on it will lead to injustice in individual cases. For a long time, legislatures went along with this and adopted a minimalist role in relation to sentencing. All that parliament did was to specify the maximum penalty for an offence and a range of sentencing options. The rest was largely left to the courts. But the legislature has always had the power to restrict judicial discretion and even to deny it all together in relation to particular crimes. Murder, for example, was traditionally punished by a mandatory sentence of life imprisonment. In Western Australia, Queensland, the Northern Territory and South Australia, it still is. Discretion can also be limited by mandatory minimum sentences. Mandatory minimum periods of licence disqualification are common for driving offences as are mandatory minimum fines for offences such as fishing offences.

For two decades broad sentencing discretion has been challenged. Concerns about apparent disparity in the treatment of similarly circumstanced offenders, and confusion and mistrust arising from the gap between the length of sentences pronounced and time served led to a number of major sentencing reviews. Changes introduced as a consequence of such reviews were quite modest and included consolidation of sentencing laws, some broad statutory guidance, improved sentencing information and judicial education. But broad sentencing discretion remains largely intact.

The most recent challenge to broad unstructured sentencing discretion derives from the perception that sentencing outcomes are too lenient, rather than from an elaboration of notions of consistency and fairness (Zdenkowski 2000). Mandatory sentencing and proposals for sentencing grids have been two outcomes of law and order politics which portrays the judiciary as out of touch, unresponsive and unaccountable (Morgan 1999).

Sentencing grids

Sentencing grids typically comprise a two-dimensional graph with one axis for offence seriousness and one for prior convictions. They have been introduced in many jurisdictions in the United States to restrict judicial sentencing discretion. However, to date they have not achieved widespread acceptance in Australia. Only in Western Australia has legislation embodying a sentencing matrix system been introduced (Zdenkowski 2000; Morgan 1999). It faced stern judicial criticism and was not proclaimed.

Mandatory penalties

The Western Australian mandatory "three strikes and you're out" regime was introduced in 1996. Under amendments to the *Criminal Code* (WA) an adult or juvenile offender convicted for the third time or more for a home burglary must receive a 12-month minimum term of imprisonment or detention. The Northern Territory scheme came into operation in March 1997. Amendments to the *Juvenile Justice Act* 1983 (NT) and the *Sentencing Act* 1995 (NT) introduced mandatory penalties for "property offenders". Property offenders included stealing but not shoplifting, criminal damage, unlawful entry into buildings, unlawful use of a vehicle and receiving. For juveniles, 15 and 16 year-olds found guilty of a second or subsequent property offence, a 28-day period of detention was made mandatory. For offenders aged 17 and over a minimum term of 14 days applied to a first offender and escalating minimum terms for repeat offenders: 90 days for second offenders and 12 months for third offenders. The regime operated harshly and resulted in imprisonment for trivial offences that would not otherwise have attracted such harsh penalties. Mandatory penalties are unequal and discriminatory in a number of ways (Brown et al 2001, p 1411).

Moreover there is considerable doubt as to the efficacy of such measures in terms of crime reduction (Zdenkowski 1999). A Bill to override these mandatory regimes was passed by the Senate but failed to pass the House of Representatives. Following the defeat of the of Northern Territory Country/Liberal Government in the election in mid 2001, the new ALP government honoured its promise to repeal the legislation.

Dialogue Box 14.2

Examples of the harsh and oppressive operation of the NT's mandatory sentencing laws:

- A 22 year-old Aboriginal woman was sentenced to 14 days' jail for stealing a can of beer. She had no prior convictions.
- Two apprentices, who were refused entry to a hotel because they were drunk, received sentences of 14 days' imprisonment for breaking a light and a window; neither had prior convictions.
- A trainee teacher lost her temper when she was refused a refund for a hotdog and she poured water on to the till: 14 days' imprisonment.
- A 15 year-old Aboriginal boy serving a mandatory term of 28 days imposed for stealing stationery worth less than $100 committed suicide (Warner 1998, 2000).

Aims of sentencing

Sentencing legislation in Australian States preserves what has been referred to as a "cafeteria system of sentencing aims": a fairly wide choice of aims to be taken in whatever amounts the sentencer decides (Ashworth 2000, p 62). Retribution, deterrence and rehabilitation are the three traditional justifications of punishment. Incapacitation, denunciation and restitution are sometimes added to these aims. In some jurisdictions the legislature has declared a primary rationale. England and Sweden are examples of jurisdictions that have made *desert* (the modern form of retribution) the primary rationale in most cases. Australian jurisdictions have not generally done this. The failure to declare a primary rationale leaves the sentencer free to choose between the various goals and to attempt to balance overlapping and partly conflicting aims. One way the courts have attempted to do this is by using "the protection of society from crime" as an umbrella term to cover all the purposes. Appeal courts have also given some guidance as to which purpose should generally be dominant for certain kinds of offences or offenders. Inevitably this guidance can point in different directions. Below is an example of the conflict between the goals of general deterrence and rehabilitation.

Dialogue Box 14.3

Facts relating to the offence: D pleaded guilty to two charges of dangerous driving. On the first occasion the police observed him driving in the city at 110 km/h, at times skidding and mounting the footpath. On the second occasion he overtook an ambulance on a blind corner and later managed to evade the police by travelling at speeds over 150 km/h.

Plea in mitigation: A psychiatric report was tendered which explained D had recently developed a mental illness (bipolar affective disorder) and at the time of the offences he was suffering a manic episode. He had sought treatment and he had returned to his employment.

Decision: The magistrate noted he was required to regard general deterrence as a priority in cases of dangerous driving but that the deterrent effect of the sentence would not be significantly reduced by an individualised sentence in this case and that it was inappropriate to make a person suffering from a mental disorder the subject of a general deterrent sentence. He was sentenced to a total of 10 months' imprisonment but the sentence was wholly suspended on conditions which included a probation order and psychiatric treatment. The magistrate's decision was upheld on appeal (see *Parker v Gleeson* [1991] TASSC 66).

Sentencing Principles and Appellate Guidance

Appellate courts have developed a body of sentencing law over the last 50 years. Some of these principles are quite old, such as the rule that the maximum sentence should be reserved for the worst possible case. Another example is the *disparity principle*. The disparity principle provides that consistency and the avoidance of injustice require a court to have regard to a sentence imposed on a co-offender even if it is inadequate. Some of these common law principles have been recognised in sentencing legislation. The principle that a sentence of imprisonment should only be imposed as a last resort is an example, and the *proportionality principle* — a sentence must be commensurate with the seriousness of the offence — is another. Sentencing practice, if not principle, characterises certain relevant facts as aggravating or mitigating. A plea of guilty, for example, is generally mitigating and in some Australian jurisdictions the courts are strongly encouraged to specify the amount of the discount. The use of a weapon is an aggravating factor in many crimes. Other examples of aggravating and mitigating factors are listed below.

Aggravating factors

- Offence committed by a group or gang
- Vulnerable victim, for example, elderly, very young or disabled
- Prevalence of the offence
- Premeditation and planning
- Provocation
- Breach of trust

Mitigating factors

- Absence of prior convictions
- Informing (assisting the prosecution by giving evidence)
- Youth of offender
- Remorse

Sentencing tariffs and options

As well as the maximum penalty for the offence a sentencer will also consider the pattern of sentencing or tariff for the particular offence. The availability of statistical information showing the range of sentences imposed for specific offences varies between jurisdictions. In New South Wales a computerised database provides judicial officers with a wide range of quantitative information about sentencing practices.

Sentencing options can be roughly classified into the following four categories:

- *Unsupervised release* which covers unconditional and conditional discharge and adjournment or deferral of sentence;
- *Monetary penalties* which cover fines, compensation orders and restitution orders;
- *Supervised release* or community-based sentences which cover probation orders community service orders and, in some jurisdictions, intensive correction orders.
- *Custodial orders* which cover imprisonment, periodic detention, home detention and custodial sentences for youth such as detention orders or youth training centre or youth residential centre orders.

The fine is the most frequently imposed sanction in the lower courts and imprisonment the most frequently imposed in the higher courts.

CONCLUSION

The significant impact that pre-trial processes have on the outcome of criminal cases is masked by their relatively low visibility. This low visibility coupled with the complexity and inaccessibility of the law in this area provides opportunities for the subversion of due process mechanisms at the behest of administrative efficiency. The requirements of administrative efficiency also erode due process aspects of criminal trials. This is particularly evident where the principle of fairness is concerned. Fairness is a vague concept, susceptible of different meanings and requirements in different contexts.

At the sentencing stage of the criminal process, the participation of victims continues to be a troublesome issue. The curtailment of judicial discretion in sentencing and the extent to which mitigatory weight should be given to factors that promote administrative efficiency remain issues of ongoing concern. Most concerning though, is the way politicians and the media exploit the popular appeal of punitive measures and a "get tough on crime approach", despite the unrealistic expectations this engenders as to what sentencing can achieve in terms of crime control.

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QUESTIONS

1. Spend a morning or day observing proceedings in a lower and a higher court. Compare the nature of the proceedings in both, including the type of offences dealt with, the manner in which the proceedings were conducted and any sentences that may have been handed down.
2. How is the criminal process usually initiated? Why have the courts and legislators tried to encourage the police to initiate proceedings by way of summons in preference to arrest wherever possible?
3. What does the term “consensual policing” mean? Why do the police resort to this method of policing? If the police wish to question you, what rights do you have?
4. What are the major objections to plea bargaining? How might they be resolved?
5. What did the court proceedings you observed (see Question 1) reveal about the practical operation of the principle that everyone is entitled to a fair trial according to the law? For example, were there any matters that you observed that were likely to impact one way or the other on the fairness of the proceedings for the defendant?
6. How does sentencing work in practice?
7. Two offenders, B and C, committed an armed robbery. B pleaded guilty at the earliest opportunity and C pleaded not guilty and was convicted at trial. Discuss whether B should get a more lenient sentence than C because he pleaded guilty.
8. If a victim of an offence such as a serious assault does not wish the offender to go to prison, should this be relevant to sentence?
9. Why is mandatory sentencing so controversial?

FURTHER READING

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USEFUL WEBSITES

www.abs.gov.au/ausstats
Australian Bureau of Statistics, National Centre for Crime and Criminal Justice

www.aic.gov.au/publications/facts/2000
Australian Institute of Criminology 2000, *Australian Crime Facts and Figures 2000*

www.aic.gov.au/publications/tandi/index/html
Australian Institute of Criminology 2001, *Trends and Issues in Crime and Criminal Justice*

Notes

1 This tactic may have been aborted in Tasmania by the decision of Underwood J in *Sammak* (Unreported, Tas SC 57/1992, 10 August 1992), namely that it is an illegitimate practice because justices are available around the clock to determine applications for bail.

2 The ACT is an exception to this.

CHAPTER 15

PRISONS AND IMPRISONMENT

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KEY WORDS

- imprisonment
- imprisonment rate
- classification
- prisoners
- privatisation

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INTRODUCTION

Is going to prison a soft option? Are prisons a "home away from home" or the worst form of punishment? What does imprisonment achieve? Sending people to prison helps maintain law and order. Prisons form one element of social control, like policing, schools, youth organisations, and compulsory detention of people under mental health and guardianship laws and of those seeking asylum in Australia.

This chapter begins with a brief overview of the development and use of Australian prisons, and a look at the recent growth in prisoner numbers. Following an analysis of the prisoners' experiences and problems in their care and management, the chapter concludes with a discussion of some recent debates: measuring efficiency and effectiveness, privatisation, and whether imprisonment works.

Photograph courtesy Ben Searcy Photography, from the Courts Administration Authority South Australia website (www.courts.sa.gov.au)

PRISONS IN HISTORICAL CONTEXT

Over the long history of imprisonment, there have been changes in the purposes for which it has been used. Three main functions have been described (Pugh 1968):

- Custodial — detaining those awaiting trial or sentencing.
- Coercive — to encourage co-operation with inquisitorial inquiries, such as royal commissions and parliamentary committees, to try and achieve payment of debt to the Crown and to minimise the possibility of contempt of court.
- Punitive — deprivation of personal liberty as punishment.

Custodial and coercive uses of imprisonment have the longest history, but, by medieval times in England, some wealthy people were being punished by sentences of imprisonment. However, it was common for centuries that most offenders (usually the less privileged) were put in stocks, branded, maimed, tortured, burnt, executed or physically punished in other ways. Foucault (1977) wrote about how the focus changed in Europe in the early 19th century towards imprisoning people as their punishment. He saw imprisonment as more *calculated*, *technical*, and *rational* than previous forms of punishment. How effective, though, is it to remove people from the community into prisons, thinking that they will be better people on return to the community? Are our prisons a "technology of salvation" (John Howard, cited in Ignatieff 1978, p 57) aimed at rehabilitating prisoners, or just another, but equally awful, way of imposing pain as suggested by Foucault (1997, p 257). An early advocate of rehabilitation in imprisonment was Alexander Maconochie (Barry 1958, pp 69ff; Shaw 1966, 1988, pp 270-271), who was in charge of the Norfolk Island penal colony during the early 1840s. Under Maconochie's Mark system, convicts could reduce the amount of time served by earning "marks of commendation" for quantity and quality of work and good behaviour.

While prisons were developed to direct punishment to the mind, replacing torture, execution, and other punishments directed at the body (Foucault 1977), the transition from one to the other was not abrupt and clear-cut, but gradual and hesitant. Punishments directed at the body (especially corporal punishment and other ill-treatments) continued within prisons as recently as 1957 in Victoria (Barry 1958; Lynn & Armstrong 1996).

The word "prison" often brings to mind an image of an old 19th century bluestone building with watchtowers at each corner, staffed by prison officers. But prisons today are more likely to be modern "architectural" edifices with barbed wire on top of steel mesh fences or concrete walls, monitored by closed circuit television systems. Whatever their precise architectural form, Foucault and others have pointed out, prison design has focused upon *surveillance* and *containment*.

The last 25 years have seen an unprecedented building program to cope with increasing numbers of prisoners and to improve on the living standards of the older Victorian-era facilities (providing better ventilation, light and sewerage, for example). The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (1958) ("SMRs") provides international standards for prison buildings and programs.

An outside view of F-Division, Yatala Labour Prison, South Australia

Source: Department of Correctional Services website (www.corrections.sa.gov)

But focusing on buildings is only one of the many ways we can think about prisons. Another is to look at the history of imprisonment in Australia (Daniels 1998; Finnane 1997; Hughes 1987; Shaw 1966; Robson 1965). This began in 1788 when Britain decided to rid itself of its unwanted offenders by creating the penal colony of New South Wales. In 1788, 548 male and 168 female prisoners arrived in the First Fleet at Sydney Cove (Shaw 1966, 1988, p 363). Eventually the early colonists abandoned the idea of the *whole* of New South Wales being a prison (Lynn & Armstrong 1966, p 25; Grabosky 1987, p 10) and began to construct those easily recognised buildings to serve as prisons (Barry 1958, p 211). Approximately 160,000 persons, all but 25,000 of whom were male, were transported to Australia between 1787 and 1868 when transportation ceased (Finnane 1997, p15). The rise of imprisonment as a form of punishment distinct from transportation, along with political development around the continent, led to five separate prison systems in Australia by the end of the 19th century.

USE OF IMPRISONMENT

Those first British colonial settlements developed into today's six States and two Territories with prisons the responsibility of the State and Territory governments. However, when Federation was achieved in 1901, the colonies gave up some of their powers to the Commonwealth Government, including the external affairs powers. Australia's obligations under United Nations conventions impact on the States and Territories in how they operate their correctional systems and draft related legislation. The Commonwealth Government must report to the United Nations every five years on the extent of compliance with the Standard Minimum Rules by the Australian States and Territories. This means that the manner in which prisons are run is not simply a domestic matter and there is pressure on each of the systems to operate in substantially the same way and with a similar legal framework.

While Australia's eight prison systems share many common traditions and operating procedures, some variation developed between them, sometimes reflecting different political traditions. Liberal governments tend to believe in individual effort and private enterprise, seeing criminal behaviour as aberrant and usually the responsibility of offenders. Labor governments were more inclined to take account of social factors involved in crime and acknowledge collective responsibility for these conditions and the impact they may have on a person's life chances. But today both parties are inclined to approach criminal justice matters by "beating the law and order drum", using tougher rhetoric about offenders, legislating for longer sentences, and building new prisons (Hogg & Brown 1998).

PRISONER NUMBERS

On 30 June 2001 there were nearly 22,500 prisoners in Australian prisons (ABS 2002, p 3). There are several ways to calculate the numbers of people in prison.

Daily average

The daily average is calculated by averaging the daily population of prisoners over three months. For example, in the quarter to June 2001, the daily average number of prisoners in Australia was 21,487 (ABS 2002a, p 6). So Table 15.1 below shows that the number of Australian prisoners has more than doubled in the last 25 years. In addition, it can be concluded that the prison population is growing more rapidly than the general population. (Since 1988, the Australian population is estimated to have increased from 16,532,000 to 18,751,000, 1999 (ABS 1999b).) The daily average also provides a convenient measure of such things as the number of prison beds and cells being used, the number of staff per prisoner and the expenditure per capita.

Imprisonment rate

This statistic allows us make comparisons between Australian jurisdictions in the way they use imprisonment, but also to compare Australia's use of imprisonment with that of other countries. For instance, is New South Wales more likely to send people to prison than Victoria? Does the United States lock up more of its citizens than Australia? A common method is to compare prisoner numbers per 100,000 adults — in this case, the number of prisoners (using the daily averages) per 100,000 people of imprisonable age.

Table 15.1 *Growth in Australia's prison populations*

Year	Daily Average (increase)	Imprisonment rate (increase)
1976/77	8,743	90.7
1988/89	12,004 (3261)	96 (5.3%)
December quarter 2001	21,391 (9,387)	145 (44%)

Source: ABS 2002a, p 3; Walker 1994, pp 24, 25

Table 15.1 shows a dramatic increase over the last decade in the way imprisonment is used in Australia.

How does Australia's imprisonment rate compare with other countries?

Examples of this are in the reports of the *Asia and Pacific Conference of Correctional Administrators*. Member nations provide data on their use of imprisonment. The 2000 report shows the following: Thailand 334; Singapore 344; Hong Kong (now part of China) 164; New Zealand 148; Malaysia 104; China 107; Canada 107; Australia 108.9; Japan 44; Indonesia 25.4. Note that the Australian rate is 108.9 and not 145 because the APCCA uses the total population of a country as the denominator, not just those of imprisonable age.

The national imprisonment rate has risen over the last 40 years, from what could be considered moderate (under 100) to high (over 100), although the rate dropped from the middle 1970s until the 1980s. This decline was probably a result of several factors: the introduction of remission schemes in some States, the development of alternatives to imprisonment (for example, community service orders in Tasmania, Attendance Centres in Victoria) and the turmoil in many of the nation's prisons (which perhaps led to more cautious use of imprisonment)(see, for example, Lynn & Armstrong 1996; Nagle 1978; Jenkinson 1972).

Indigenous imprisonment rates

If the Australian imprisonment rate is now high, rates of imprisonment for Indigenous Australians are extreme. While Indigenous people constitute about 2.1% of the population (ABS 1999a), they made up 19% of the prison population (4,445 prisoners) on 30 June 2001 (ABS 2002b, p 11) and nationally they are imprisoned at a rate around 15 times that of other Australians (see Table 15.2 below). This has significant consequences (see Dialogue Box 15.1).

Dialogue Box 15.1

The Royal Commission into Aboriginal Deaths in Custody

The RCIADIC was created in 1987 "in response to a growing public concern that deaths in custody of Aboriginal people were too common and public explanations too evasive to discount the possibility that foul play was a factor in many of them" (Johnston 1991, p 1). The deaths of 99 Aboriginal and Torres Strait Islander people were closely examined.

Perhaps the most important finding was that Indigenous people did not die in custody at a greater rate than non-Indigenous people but that they come into police and correctional custody at an overwhelmingly higher rate (Johnston 1991, p 6).

The 339 recommendations addressed wider social issues underpinning the over-imprisonment of Indigenous people, and sought improvements in policing, police use of custody, court operations and the adult correctional system. Some improvements and a greater sensitivity to this issue have eventuated. However, in the current climate of increasing punitiveness, the RCIADIC recommendation that imprisonment be used as a last resort for Indigenous persons has not been adequately implemented and Indigenous imprisonment rates remain at high levels (Cunneen & McDonald 1997, p 9). Since 1987 the disproportionate imprisonment of Indigenous persons has increased from 14.6% (Biles 1992, p 91) to 19% as at the 30 June 2001 (ABS 2001b, p 11).

Table 15.2 *Indigenous (and non-Indigenous imprisonment), 1 June 2000*

State	Number of prisoners (non-Indigenous)	Imprisonment rate per 100,000 adult Indigenous (non-Indigenous)
NSW	**1339** (7419)	**1970.9** (149.2)
VIC	**150** (3234)	**1060.3** (86.5)
QLD	**1146** (3371)	**1724.4** (125)
SA	**230** (1027)	**1651.7** (88.6)
WA	**1072** (2098)	**3036.1** (147.6)
TAS	**40** (306)	**417.7** (87.7)
NT	**456** (261)	**1356.5** (244.3)
ACT	**12** (206)	**566.4** (79.5)
TOTAL	**4445** (17786)	**1828.5** (150.5)

Source: ABS 2002b, p 11 (there are also 227 prisoners whose race is not recorded)

Factors affecting Australia's increasing imprisonment rate

There are seven reasons commonly given for increases in the imprisonment rates:

- varying the age (17 or 18) applying to adult responsibility for criminal behaviour
- an increase in the population of imprisonable age;
- the population of prisoners awaiting trial or sentence is increasing – 13% in 1988 to 19% in 2001 (ABS 2002b, p 11). Average time on remand was 4.5 months, but 10% spent more than 10.3 months in custody (ABS 2002b, p 8). However, demographic trends, such as the aging of the Australian community, should eventually lead to a decline;
- any growth in the numbers of poor and marginalised people, as this can sometimes be associated with criminal behaviour;
- an increased ratio of police per head of population, because this is likely to affect the arrest rate;
- sentencing to longer periods of imprisonment; and
- new punitive laws, such as mandatory sentencing (recently repealed in the Northern Territory).

Very significant differences between the States and Territories are revealed through statistical measures such as imprisonment rates. An important question to ask is whether these expose fundamental human rights issues about fairness and justice within our criminal justice system (Hogg 2002, p 17; Dawes 2002b, p 176). If so, it could be more socially useful and cost effective to address them, particularly because the custodial cost per prisoner is about $50,000 per annum (AIC, *Facts and Figures*, 2002). Prisons also devour resources that might otherwise be spent on education, health, housing and family support, all of which may contribute to the long-term prevention of crime (Hogg 2002, p 5).

David Biles stated that, while Australia's imprisonment rates had been at "reasonable levels", they could be reduced especially in those jurisdictions with higher rates (Biles 1986, p 243). He warned however that the views of the public were critical because reactions to escapes, early release and offences committed by prisoners on parole would result in campaigns for increased sentences and for less modification of sentences by executive government, such as through temporary leave and early release.

Remission programs

Granting prisoners remission of part of their sentence has caused some public concern (for example, giving rise to calls for "truth in sentencing"). Remissions for good behaviour and application to work reduced the length of the total sentence and the actual term served in prison (called the minimum term or non-parole period). Remission programs had been introduced in New South Wales, Victoria and South Australia in the 1970s and 1980s when there was more community interest in prisons following widespread turmoil which included riots and destruction of prison property. They were based on the recommendations of Royal Commissions (Nagle 1978; Clarkson 1981) and similar inquiries (Jenkinson 1973).

When introduced, remissions were described as *reforms*. The programs provided prisoners (who otherwise had little to lose) with the incentive to engage in co-operative behaviour. At the time some correctional agencies were using early release provisions to try and manage crowding of their facilities, for example in South Australia. It is ironic that, when the remission programs were subsequently removed in the 1990s, this was also described as "reform". As Biles (1986) had predicted, there had been a growing community reaction. The ensuing successful campaign for "truth in sentencing" overturned executive modification (that is, use of temporary leave and granting of remissions to reduce the time served) of sentences. This could be seen as one measure of a growing punitiveness in society with the increasing rates of imprisonment being another indicator (Dawes & Grant 2002).

Prison Utilisation

This third statistical measure has become important in recent years as governments have tried to grapple with how to use such costly structures efficiently. According to the *Report on Government Services* (2001, p 468), the optimum rate of prison utilisation is *not* 100%. This is because some spare beds are needed for emergency transfer of prisoners, accommodating men and women separately, providing for prisons of different security levels and to cope with short-term fluctuations in prisoner numbers. The internationally accepted rate is between 85 and 95%, depending upon the role of the prison.

In 1999-2000, prison utilisation for all prisons (secure and open) ranged from 77% in the Northern Territory to 118% in Western Australia. However, rates in New South Wales, Victoria, Western Australia and South Australia exceeded 100% of design capacity because such crowding is achieved through placing two or three to a cell designed for single occupancy (*Report on Government Services* 2001, p 469). All other factors being equal, prisons approaching or exceeding their design capacity are likely to be more difficult to manage. Crowding restricts management's ability to govern flexibly, protect vulnerable prisoners, attend to routine maintenance and provide sufficient employment and other activity programs.

COMPOSITION OF AUSTRALIA'S PRISON POPULATIONS

The following discussion outlines some of the key demographic and offence data for Australian prisoners.

Gender

In Australian prisons on 30 June 2001, there were 20,960 males comprising 93% of the total prisoner population. This is an imprisonment rate of 285 per 100,000 adult males (ABS 2000b, p 4). There were 1,498 female prisoners, 7% of the total prisoner population, with an imprisonment rate of 20 per 100,000 adult females (ABS 2000b, p 4).

Dialogue Box 15.2

Women in prison

Until the 1950s, women prisoners were mainly housed in units within men's prisons and worked at traditional women's labour: laundry, sewing, cooking, cleaning and gardening. They were treated in a childlike fashion, dressed in "girlish" clothing and frequently called "girls". They were regarded as depraved. Christian evangelical practices influenced prison regimes and it was thought that these could contribute to their reformation.

Such approaches to managing women prisoners reflected inequalities based on gender, the low levels of funding for all prisons and the principle of parity, that is, budgets are allocated in proportion to the numbers of women and men (Wynne-Hughes 1988, p 131).

Changes in the last 30 years include the development of separate women's prisons, including open facilities, such as Tarrengower in Victoria. It was only in the 1970s that women prisoners in some jurisdictions were allowed to keep their babies with them in prison. However, more programs are still required to address the special needs of women prisoners who commonly have a history of sexual and physical abuse, poor educational achievement and addictive behaviours. Post-release programs for women remain inadequate and it is known that some women prisoners suicide soon after release (see Rafter 2000).

Age

Most prisoners are young adult males, over half (56%) aged between 20 and 35 years, with very small numbers under 18 years and over 65 years (ABS 2002b, pp 4, 12).

Country of birth

The majority (74%) of prisoners was born in Australia (ABS 2002b, p 13). In total, about 12% whose country of birth was known were born in a non-English speaking country. However, for many Indigenous prisoners English may also be a second language.

Legal status and sentence type

Traditionally the most common way of describing prisoners is by legal status, that is, those who are remanded in custody but unconvicted (or convicted and awaiting sentence) and those serving a sentence. On 30 June 2001, most prisoners (75%) were serving a maximum/minimum sentence or a fixed term sentence. Five per cent were serving periodic detention in New South Wales and the ACT (a form of part-time or weekend imprisonment not available elsewhere in Australia). Four per cent were serving an indeterminate sentence (life, governor's pleasure or sentence subject to administrative/ministerial decision). Less than 1% were in custody for not paying fines, referred to as fine default. The remaining 19.3% were remanded in custody awaiting a hearing, sentencing or appeal or were being held under a deportation order (ABS 2002b, p 14).

Most serious offence/charge

The most serious offence committed by a prisoner is that for which he or she has received the longest sentence. For unsentenced prisoners, the most serious charge is the one that carries the longest statutory maximum sentence. On 30 June 2001, nearly half (48%) of all sentenced prisoners were convicted of an offence involving violence or the threat of violence: sex offences (10%), robbery (13%), assault (11%), murder (7%), other homicide (3%) and other offences against the person (1%) (ABS 2002b, p 15). Overall, the highest proportion of males was sentenced for sex offences (11%) while the highest proportion of females was sentenced for fraud and misappropriation and government security/justice procedure offences (14.2%) (ABS 2002b, p 35).

Known previous imprisonment

More than half (58.4%) were reported as previously having served a prison sentence. Some individuals may have served several previous sentences (ABS 2002, p 15). Such recidivism rates can be considered as an indicator of whether people's offending behaviour can be changed by sentencing them to prison, that is, reduction in recidivism can be regarded as an outcome measure of the success of a correctional system (Harding 1997, p 19).

Sentence length and period held on remand

The aggregate sentence was 4.8 years. The average time served in custody was 2.9 years. The average time spent on remand was 4.5 months (ABS 2002b, p 7).

Coercive imprisonment

At 30 June 2001, 102 people or 0.5% were in prison because of failure or refusal to pay fines (ABS 2002b, p 13).

THE PRISON EXPERIENCE

It takes a lot of effort to imagine what it is like to be locked up, sometimes for years (see Ellem 1984). You cannot visit the beach, friends, go out for a meal or drinks, watch sport, see a film or attend a concert. You probably spend 10-12 hours out of every 24 confined to a room about the size of a bathroom. If you are lucky, you will be in a modern cell, so you might have a shower, a toilet and a small writing bench and perhaps a view from the window. If you are "wealthy", you may possess a few books, a radio and perhaps a small television.

Inside a prison cell
Source: Department of Justice, Victoria

This will be your home for seven days per week, for months, even years. You have a very limited choice of food, activities and companions. Some other prisoners might frighten you. Prison officers monitor your behaviour around the clock. Increasingly in Australia you might be forced to share your "bedroom-toilet" with a stranger. You might find their crime and personal behaviour offensive. Gradually your friends and even your family may give up on their (at most) weekly visits.

Total institutions and deprivations

Some time ago Erving Goffman, a sociologist, wrote a definitive work on "total institutions" (1961). He defined a total institution "as a place of residence and work where a large number of like-situated individuals, cut off from wider society for an appreciable period of time, together lead an enclosed, formally administered round of life". "Prisons", he said, "serve as a clear example" (Goffman 1961, p xiii). There is a "basic split between a large managed group, conveniently called inmates, and a small supervisory staff" (p 7).

Prisoners are dependent upon prison officers for their daily care and needs and, when there is a breakdown in staff vigilance or commitment, lives may be at risk (Dawes 1997; RCIADIC 1991). During industrial disputes prisoners are especially vulnerable as they are the captives of prison officers (see Grant 1992; Vinson 1982). Each "tends to conceive of the other in narrow stereotypes…"(Goffman 1961, p 7). Prisoners are "crims" and prison officers are "screws". Prisoners commonly call male officers "boss", in normal conversation, for example, "What do you want me to do next, boss?" The human beings behind the labels of "crim" and "screw" can rarely emerge. Often prison officers demand to be called "Sir" and refer to prisoners by their family name, for example, "Jones, come to the office". Female officers are called "Miss". Management attempts to change these practices are resisted. "Social mobility between the two is grossly restricted" (Goffman, p 7) and it is almost impossible for an ex-prisoner to become a prison officer although the opposite transition does sometimes occur.

According to Sykes (1958, p 41) correctional officers and the prison bureaucracy are in an almost "unparalleled position of power – in formal terms at least – vis-à-vis the body of men (sic) which it rules and from which it is supposed to extract compliance". Since Sykes wrote this, prison management has moved somewhat to *encouraging* rather than *extracting* compliance. However, the huge power imbalance prevails. Today its reality is only slightly modified by such factors as prisoners' access to the Ombudsman and other officials and their capacity to communicate with people in the community. Prisoners do retain their power to disrupt prison life and cause considerable damage, but this does not often occur. When it does, it is usually a significant symptom of something that needs addressing, for example, the prisoner may be distressed by family news and is powerless to do anything. However, a group of disruptive prisoners is a serious issue for management. It suggests something is fundamentally wrong. If it continues at a serious level over a long period (often involving physical damage to people and property), greater intervention may be required, for example, a Royal Commission.

In most respects, a prisoner's life is pretty boring. Compared with life "on the outside", the most obvious differences are what is missing. Limited choice in human company, food, or daily routine has been mentioned, as well as limited activities and time out from one's cell. Gresham Sykes (1958) has defined these as the "pains of imprisonment." The first pain is that of *loss of liberty* (Sykes 1958, p 65). Sykes stated that "what makes this pain of imprisonment bite most deeply is the fact that the confinement of the criminal represents a deliberate, moral rejection of the criminal by the free society"(1958, p 65). While the "civil death" provisions in Australia have largely been repealed (for example, the prisoner's right to sue and be sued), prisoners are still stripped of many of their civil rights, thus amplifying the sense of deprivation of liberty and separateness from the community. The loss of liberty usually also entails a series of other significant losses including relationships and status (see Brown & Wilkie 2002).

The second deprivation is that of *goods and services* or rather the right to choices about them (Sykes 1958, p 67). Thus, while basic material needs are met, a prisoner can no longer choose, for example, what range of clothing to wear, or what food to eat, nor what doctor will examine them or when. Although prisoners are allowed certain goods in their cells, this privilege can be quickly removed when an incident within the prison prompts tightened security.

The third deprivation or pain of imprisonment is that of *deprivation of heterosexual relationships* (Sykes 1958, p 70). He concludes, speaking of male prisoners, that "the lack of heterosexual intercourse is a frustrating experience for the imprisoned criminal…"(Sykes 1958, p 71). In fact all prisoners are deprived of the opportunity to have a broad range of diverse relationships, including across the complete age range (Sykes 1958). Thus a group of adults of similar age can become a substitute "family", especially for long-serving prisoners. A death in such circumstances may be keenly felt and death by suicide is especially confronting (Dawes 2002a).

The *deprivation of autonomy* (Sykes 1958, p 73) means that the prisoner is subject to a great variety of rules and regulations that control her or his behaviour. If that is not enough, increased tension and frustration occur when staff interpret the rules and regulations differently or ignore some, thus introducing a degree of capriciousness into everyday life. The deprivation of autonomy can lead to increased dependence and loss of initiative and self-esteem, qualities needed for managing life on release.

Sykes (1958, p 76) identified the *deprivation of security* as the fifth pain of imprisonment, recognising that stressors involved in imprisonment encourage tensions which can readily flare into aggressive behaviour. Prisoners do get sexually and physically assaulted and some are killed (Heilpern 1998; Dawes 1997). As an illustration, the *Report on Government Services 2001* (p 459) lists the following assaults per 100 prisoners:

- against prisoners New South Wales 17, South Australia, 13, Western Australia less than one;
- against officers New South Wales 4, South Australia 5, Western Australia less than one.

For prison administrators, a primary issue has always been the prevention of violent incidents and escapes. Engaging prisoners in activities is worthwhile but not only for this reason.

Dialogue Box 15.3

Deprivation of Security

Mr B, aged 19, died on the 17 January 1980 at Yatala Labour Prison. He was sexually harassed in the locker shop and this was happening "all the time" (Clarkson 1981, p 16). The Royal Commissioner of this inquiry, Mr Gresley Clarkson QC, stated: "B...was driven to take his own life by the treatment he received from fellow prisoners. He would have received no comfort by the apparent lack of concern on the part of the prison authorities. Those authorities failed to take proper care of B..." (Clarkson 1981, p 17; Dawes 1997, p 12).

Care of prisoners

Prison authorities face a challenge. They must organise the prisons systems to cope with "accusations of indulgence and repression made with equal vigour" (Grant 1992, p 20), because there is not a predominant view in the community about how prisoners should be cared for, managed or indeed about their status as persons, that is, are they legally citizens or something less? Some people may think that the word "care" is old fashioned or paternalistic and that the word "manage" is more appropriate (see Dawes, Ffrench & Bradbury 1997; Vardon 1997; Weller 1997; Grant 1992; Vinson 1982).

Reception and classification

When a prisoner is received in custody, the prisoner must be found accommodation (a bed), provided with food, told her or his rights and medically assessed. This process invariably happens in the late afternoon or early evening after the close of courts. There is always a rush to process new prisoners because they arrive at a time when the prison's staff is reduced in number as the day shift completes its duty and the evening staff (sometimes referred to as the first watch) begin. This increases the risk of mistakes, including overlooking important signs of distress, or not dealing adequately with a prisoner's concerns. The importance of appropriate assessment and medical treatment has been highlighted by the RCIADIC and, together with arrangements for the protection of the at-risk prisoner (from self-harm and harm from other prisoners), are vital aspects of humane containment in a civilised society.

The basic elements of a system of classification of prisoners are contained within the United Nations (UN) Standard Minimum Rules. Rule 7 requires that appropriate identifying details for each prisoner be kept, as well as the reasons for the person's imprisonment. Each person in custody must be held against a valid order. Rule 8 requires that:

(1) different categories of prisoners be held in separate institutions or parts of an institution,
(2) men and women should be detained in separate institutions,
(3) unconvicted prisoners be kept separate from sentenced prisoners and
(4) young prisoners should be kept separate from adults.

Dialogue Box 15.4

A death in custody soon after reception

A 22 year-old male prisoner was found hanged in his cell at Adelaide Gaol on 2 July 1980. An autopsy was held and the coroner reported the cause of death as hanging. The prisoner had used a bed sheet tied to the trap, a small opening in the cell door. No inquest was held. The minimal records available in the Department of Correctional Services relating to this man make it clear that he died on his first day in custody within five hours of reception. He had been remanded to face charges of shop breaking and larceny. The post-mortem examination revealed he was drug dependent. This was probably not revealed by the prisoner on reception at Adelaide Gaol or not noticed by staff, or, if noticed, was not acted upon (Dawes 1997, p 275).

Part Two of the Rules provides for treatment aimed at encouraging rehabilitation of prisoners, for classification and individualisation, for privileges, work, education and recreation and, finally, social relations and after-care.

These rules illustrate some of the considerations that shape how prisoners are treated. The court either remands them in custody or sentences them. Figure 15.1 below shows a simplified prison system. If offenders are sentenced to imprisonment, they are assessed and classified in the reception prison (usually located in the capital city). They may then be sent to a high or medium security prison depending upon their length of sentence and the nature of the offence. As long as their behaviour is reasonable, most are released from a less secure and regimented facility.

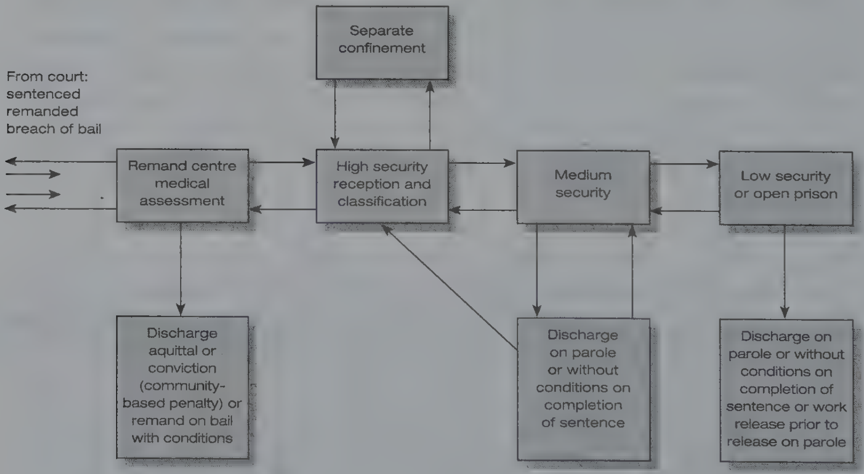
Separate confinement
From court: sentenced remanded breach of bail
Remand centre medical assessment
High security reception and classification
Medium security
Low security or open prison
Discharge aquittal or conviction (community-based penalty) or remand on bail with conditions
Discharge on parole or without conditions on completion of sentence
Discharge on parole or without conditions on completion of sentence or work release prior to release on parole

Figure 15.1 *Prison System Flow-chart*

The UN Rule 7 requires that different groups of prisoners be housed in separate institutions or parts of an institution. The process of selecting the best place for a prisoner is called classification.

Unit management and prison staff

Historically the whole prison was treated as one "unit" no matter what its size. In large prisons, staff hardly knew the prisoners. This earlier arrangement (in Australia and overseas) reflected the philosophy of the time. Prison regulations forbade non-essential or friendly communication between staff and prisoners and there was little emphasis upon the duty of care owed by staff and the agency.

However, during the last 25 years a major change has occurred to try and improve the care of prisoners. Efforts have been made to locate staff permanently in a unit, that is, a specific housing unit, for a particular time, say 18 months or two years. The leader of the team might be called a unit manager, and he or she has a permanent group of staff who individually case-manage a small number of prisoners. The aim is not only to improve the quality of life for prisoners, but also to provide more variety in the work of correctional officers.

Prisoner movement/progression

While Figure 15.1 above suggests prisoners progress through an almost linear fashion, the reality for many is more like the children's game of "Snakes and Ladders", with large doses of what prisoners commonly perceive to be chance. Some troubled prisoners, who are difficult to care for and manage, may require a number of transfers to and from separate confinement. Prisoners in low security or open prisons may be transferred back to a medium or high security prison as a result of a rule infraction, such as an escape attempt or refusal to work. Figure 15.1 shows the possibility of being returned to prison from parole (as a result of a breach of conditions or a further offence).

The sheer volume of prisoner movements places pressure on prison staff and requires efficient systems. This can be illustrated by one example – Victoria in 1999-2000. In that year the daily average number of prisoners was slightly over 3,000 and there were almost 5,000 prisoner receptions and discharges and approximately 10,000 prisoner transfers from one prison to another (Victoria 2000, p 11). This figure suggests an average of about three transfers during a period of imprisonment. The report identified one less obvious factor that increased prisoner movement around the system: the need to maximise the use of beds across the system and keep beds in metropolitan prisons available for prisoners attending court and requiring specialised medical attention.

Administration

Managing prison systems, individual prisons, and the prisoners themselves is a complex and often stressful experience. As well as caring for large numbers of society's most difficult members in a humane, systematic, accountable and cost effective manner, staff have often been viewed individually as repressive, but collectively as indulgent. Media attention is easily aroused and often translates into community and political pressure, not always in support of humane containment, nor effectiveness (see Lumby 2002). This is particularly true when comments are not informed and thoughtful, for example, calls for spartan accommodation or drug–free prisons.

TRENDS IN IMPRISONMENT AND PRISONS

Measuring efficiency and effectiveness

Effectiveness and efficiency have been given increased emphasis with the rise of economic rationalism and new managerialism in the public sector. Governments have placed greater emphasis upon containing costs. Measures of effectiveness and efficiency, sometimes described as outputs or outcomes, are now increasingly used to quantify performance. Assaults in custody have been used as one measure of effectiveness (*Report on Government Services 2001*, p 459).

The *Report on Government Services 2001* (p 455) provides a framework of effectiveness measures. Major ones are containment, reparation and offender programs. Within each are a series of contributing measures. Containment, for example, includes assaults, escapes and deaths in custody. Reparation includes the number of prisoners employed and the value of the goods produced. Offender programs include the percentage of prisoners undertaking education or training courses.

One efficiency measure is resource management. A contributing measure within this is the offender to staff ratio, that is, an increase in the number of prisoners per staff member is viewed by prison officials as a measure of system efficiency. This dimension acknowledges that some jurisdictions use private contractors to manage prisons. Another efficiency measure used is bed occupancy rates – how many beds provided in the prison system are occupied at any given time.

Privatisation

In a climate of economic rationalism and managerialism in governments, there has been a retreat from government service provision in many areas because the competitiveness of private enterprise is expected to reduce costs. Prisons are no exception. Although some elements of prison services have been privatised at various times, for example, food and medical services, the current focus is on privatising custodial services, sometimes including the provision of the prison building.

New South Wales, Victoria, Queensland, South Australia and Western Australia now have some private prisons. State governments continued to own the facilities in the first privately operated prisons, for example, Borallon, Queensland. Victoria was first to develop "DCFM" prisons. This means that the private contractor designs, constructs, finances and then manages the prison for the government. Deer Park Women's Prison in Victoria is an example.

Criticisms of moves to privatise parts of the prison system focused on the morality and legality of such moves, such as the apparent delegation of the state's authority to punish, and whether it was in the public interest to move in this direction (Harding 1997; Moyle 2000). Debate continues about whether privatisation ultimately reduces costs. More recently the concept of "commercial-in-confidence" in government-private sector contracts has been challenged, with individuals and community groups lobbying governments to hold private prison operators fully and publicly accountable. The Victorian Government has been the first to withdraw a contract as a sanction for inadequate management of a private operation. It reclaimed the private women's prison in October 2000 and, in November 2000, announced a full buy back for $20.2 million.

CONCLUSION

While discussion about efficiency, effectiveness and privatisation are relevant, any conclusions about whether prisons work are inherently linked to the community's views about the purpose of imprisonment. Sometimes people in the community think no further care should be provided to imprisoned people, that is, "lock them up and throw away the key". But, while Australia's prisons are effective at containing prisoners, it is important to think about what imprisonment does to people because ultimately nearly all prisoners come back to live amongst us. Many hope that imprisonment will "correct" offending behaviour. Consequently, high recidivism rates are regarded as a failure of prison systems. Expecting prisons to perform this function is to expect a lot, and does not recognise that offending behaviours have complex causes. Imprisonment cannot provide all the answers, nor often offer the most cost-effective response to crime. Governments have a role to play in understanding and managing the underlying causes of offending and community pressures.

In addition, humane containment is expected of a civilised society as the *United Nations Standard Minimum Rules* demonstrate. Measuring whether this is being achieved has been facilitated by the development in Australia over the past few decades of shared frameworks for reporting and common counting rules, also enabling comparisons between jurisdictions. Both scholars and bureaucrats welcome these. Important as they are, comparisons do not substitute for evaluation. Gordon Hawkins wrote "...that critical evaluation of penal measures is an essential precondition to rational and effective policy formulation and planning" (Hawkins 1976, p 176). However, with very few exceptions, this precondition has not been met

(Hood 2001, pp 2-5) and managerial dimensions of efficiency and effectiveness are no substitute for studying imprisonment "by its impact on the lives of the individuals it processes…" (Hood 2001, p 5). As long as prisons exist as part of the answer for socially offensive behaviour, ongoing and thorough evaluation is necessary to try and ensure humane containment, as is public and professional debate about the purposes of imprisonment and the best means of achieving them.

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QUESTIONS

1.

Farewell to old England for ever,
Farewell to my rum culls as well;
Farewell to the well-known old Bailee,
Where I once used to cut such a swell.

The folk song "Botany Bay" is about an early convict farewelling England. Can you think of other songs, films or books that describe what it is like to be imprisoned?

2. Do you think Australia meets its obligations to the United Nations in the way it treats its prisoners? Is it important that Australia maintain these standards?
3. What factors affect imprisonment rates?
4. What factors may contribute to the over-imprisonment of Indigenous people?
5. What factors keep some people re-offending, while others stop after being imprisoned?
6. Think of at least two reasons *for* and *against* the privatisation of prisons?

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USEFUL WEBSITES

All of the Australian correctional agencies have web sites. The three listed here are representative.

NSW: www.dcs.nsw.gov.au

Vic: www.justice.vic.gov.au
(follow path to prisons and community corrections)

ACT: www.cs.act.gov.au/default.htm

The following are two sites of great historical interest.

www.home.vicnet.net.au/~omgoal
Old Melbourne Goal

http://learningcurve.pro.gov.uk
A Victorian Prison: Why were Victorian Prisons so tough?

www.ourmessage.org
This site contains material on the ending-offending program in the NT and pays particular attention to the role of the arts is assisting Aboriginal prisoners.

www.aic.gov.au
The Australian Institute of Criminology web site is a comprehensive resource with many links.

CHAPTER 16

COMMUNITY-BASED CORRECTIONS

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KEY WORDS

- community corrections
- sentencing options
- probation
- intermediate sanctions
- parole
- risk principle
- need principle
- responsivity principle

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INTRODUCTION

In this chapter issues and practices in contemporary community corrections will be examined. Initially, this chapter will consider definitions and understandings of community corrections and how these have changed over time. Various sentencing options related to community corrections, including different types of supervision programs and correctional orders, will be reviewed. Ideas about effective rehabilitation in the community have changed over the past decade. The remainder of the chapter will consider the contemporary "What Works" approach in the context of the role of the community corrections officer and of public opinion.

Community corrections "refers to some form of non-custodial supervision of the offender" (Hall 1996, p 413), in which the aim is to provide an alternative to imprisonment (imprisonment is dealt with in Chapter 15). The role of community corrections is multi-faceted, in that it must protect the public through social control, and simultaneously punish, rehabilitate, and reintegrate the offender. In addition, community corrections often have a fiscal responsibility to reduce the financial burden created by ever-increasing prison numbers through the provision of sentence options that create cheaper alternatives to incarceration.

In 1999-2000, total recurrent expenditure on correctional services in Australia was $1,345 million of which 87% was spent on prisons and 10% on community corrections. In this period, expenditure per offender sentenced to community corrections was $6 per day compared to $131 per day for prisons. Thus, it is 22 times more expensive to keep an offender in prison than in community corrections, though this comparison does not include indirect costs, that is the expensive consequences if an offender continues to offend in the community (police investigation, court, and legal proceedings) (AIC 2001).

Traditionally, the non-custodial sentencing options administered by community corrections offices are probation and parole. Probation generally refers to a sentence served in the community under supervision, often as an alternative to imprisonment. Parole refers to that portion of a sentence served in the community after time has been served in a prison, typically on a conditional basis.

The notion that the community is the appropriate place for punishments to be served and administered has a long history. It would be a mistake to assume that the community location for punishment is necessarily associated with a more benign and rehabilitative approach. Public executions and floggings in the early days of colonisation of both

Australia and North America are, arguably, examples of a community orientation to deterrence. Similarly, imprisonment has sometimes been seen, historically, as a humane, orderly and progressive alternative to allowing the offender to remain in the "depraved" (in contemporary vocabulary, "criminogenic") community that caused and maintained her or his offending behaviour.

F-Division of Yatala Labour Prison, South Australia
Source: Department for Correctional Services South Australia website (www.corrections.sa.gov.au)

The dominant theories of crime and its causation in a particular era will strongly influence the perceived role and perceived effectiveness of imprisonment versus punishment in the community. Officially endorsed theories, of course, may not be shared by members of the community. Public opinion (or at least perceived public opinion) and the level of knowledge and education about community corrections amongst the general public are also critical factors shaping policy and practice. It is unlikely that any community program will endure in the longer term unless it has the trust of the general community and of its governmental representatives.

PHASES, FADS, AND PANACEAS

The philosophy and practice of community corrections have always been controversial and subject to the whims and vagaries of the political climate. During the 1960s, the notion of community rehabilitation was enthusiastically endorsed with funding directed towards such endeavours.

Enthusiasm for rehabilitation in general was dampened when Martinson (1974), in a very influential paper, presented evidence that "nothing works" in offender rehabilitation. By the 1980s the rehabilitation of offenders had given way to a more punitive approach in which sanctions, punishment, and intensive surveillance received favour. The demise of the "nothing works" era was accelerated by re-evaluations of the evidence marshalled by Martinson. Thornton (1987), for example, using a more rigorous analytic method, re-examined the studies used in Martinson's paper and concluded that in 47% of the methodologically sound studies rehabilitation program participants showed significant improvements post-treatment. This paved the way for researchers to explore under what conditions correctional treatment was effective (for example Andrews and Bonta 1994). Thus, the contemporary correctional emphasis is on both punishing *and* "helping" the offender, based on "evidence" and "what works". This approach cuts across the traditional punishment–rehabilitation dichotomy.

Petersilia (1998, p 2) points out

> "...it is a false dichotomy to argue between tough law enforcement and community based crime prevention ... we need to create enough prison space to incarcerate those who are truly violent and also support programs to reduce the tide of criminals."

The conservative "Law and Order" approach has also stumbled because of the problems of first, the failure of imprisonment to reduce the crime rate and secondly, vast increases in the prison population and associated government expenditure (Dean-Myrda & Cullen 1998). According to the latter authors, the conservative solution to these problems was to implement control and punishment of offenders in the community through "intermediate sanctions" (mid-way between imprisonment and probation). Intermediate sanctions would include options such as home confinement, electronic monitoring, intensive supervision and drug testing. These are discussed in more detail below.

Dean-Myrda and Cullen (1998) see intermediate sanctions as yet another panacea that has failed to live up to expectations. These authors also see the panaceas as having a shorter shelf-life in future, in part because of the more skeptical and evaluative culture that has developed, offering the possibility of a more realistic and rational approach to community corrections. They caution against panaceas in general:

> "Panaceas are not fully without value, since they have the potential power to energize reform and to reshape social institutions in need of change. But their continuing downside is that they enforce a kind of political correctness that obscures the complexity inherent in social issues (such as crime) and that cuts off reasoned debate." (p 15)

They suggest we should enter a "post-panacea era".

SENTENCING OPTIONS

The courts have a variety of sentencing options, amongst them imprisonment and community corrections. In the financial year 1998-1999 a daily average of 76,520 persons received correctional services in Australia, with 72% of these being in community corrections (the remainder were in prison, with a small number receiving periodic detention). The community corrections figures (see Table 16.1 below) correspond to a rate of 387.1 per 100,000 population over age 16. Supervision orders are the most common community corrections option (approximately half of all offenders). Fine option orders and community service bonds/orders are also common disposals.

Table 16.1 *Offender, by Type of Community Sanction (1998–1999)*

Community Sanction	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	Aust
Home Detention	158	-	109	90	119	-	20	-	496
Fine Option	310	NA	10849	604	3744	239	146	NA	15892
Community Service	4162	NA	2003	1870	1364	636	92	220	10347
Supervision	10378	NA	8037	3272	3333	885	351	921	27177
Total	13656	7246	19390	4298	7754	1308	998	604	55253
Rate per 100, 000 adults									
Prisoners									
Community	143.4	79.1	191.5	196.1	121.9	93.3	462.3	70.5	139.1
Corrections	284.5	200.7	736.2	314.0	683.4	367.7	447.4	425.4	387.1

Source: ABS 2001

Community corrections includes a number of non-custodial programs (Table 16.1) either as an alternative sentencing option or as a mechanism of post-custody reintegration of offenders into the community under controlled supervision. Sentencing options can be non-custodial or "front-end" alternatives, in which the offender is sentenced to a fixed period of community supervision in the forms of suspended sentences, court-imposed home detention, community service orders, probation, intensive supervision orders and recognisance (bond). Post-custodial or "back-end" alternatives aim to reduce the extent of imprisonment whilst providing community supervision and reintegration for offenders nearing the end of their sentence. Post-custodial options include parole, release on license, pre-release orders and home detention (AIC 2000).

Diversion Programs

Diversion Programs are used as a means of diverting eligible offenders from the criminal justice system to specific programs that address issues related to criminal behaviour. For example, in South Australia a two year Drug Court program pilot commenced in May 2000. This combines judicial supervision, mandatory drug testing, community sanctions, and treatment and support services (Courts Administration Authority, SA, nd). The Drug Court targets offenders who have pleaded guilty to a drug-related offence and who would be likely to receive a period of imprisonment. The Drug Court adjourns sentencing to allow the offender to address their drug-related behaviour through the development of a rehabilitation plan and supervision. Once the rehabilitation program is completed the offender is sentenced, with their progress towards rehabilitation being taken into account.

Probation

Probation has traditionally been a non-custodial sentencing option under which the offender remains in the community under supervision of Community Corrections for a specified period. During the supervision period, the offender must adhere to probation conditions (for example abstinence from criminal activity, drugs and/or alcohol and regular reporting to community corrections). If the offender breaches these conditions, resentencing and possible imprisonment may occur.

In crude terms, the offence is either a serious one producing a prison sentence, or the offence is relatively minor and a community corrections disposal is preferred. Drawing the line between serious and minor offences is a difficult task, with the inherent dangers of imprisonment of people whose offences do not warrant it or releasing to the community those that pose a significant risk to others. The need for flexible intermediate options is self-evident. The notion of a continuum of sanctions rather than an either/or solution has much intuitive appeal and allows for a more flexible response to crime.

Intermediate sanctions

Intermediate sanctions were introduced in an effort to provide some middle ground between the perceived leniency of probation and the financial burden of prison. Intermediate sanctions can include fines, community service orders, supervision fees, house arrest, intermittent imprisonment, split sentences, day reporting, electronic monitoring, and intensive supervision. In essence, intermediate sanctions aim to reduce recidivism by decreasing offenders' capacity for, and their opportunity to commit, further crime through surveillance, control and the specific deterrence provided by the punitiveness of the sanction (MacKenzie 1995). In reality, intermediate sanctions have punishment or the threat of punishment as their motivator for the adoption of a pro-social lifestyle (Gendreau & Paparozzi 1995).

Examples of intermediate sanctions

Community Service Orders involve some form of community reparation (unpaid community work) and are often combined with probation (Hall 1996). However, there is a dearth of empirical evaluations on the impact of such programs on the offenders that complete them (Immarigeon 1995).

Home detention programs were devised as a means of reducing the cost of imprisonment and prison over-crowding, while remaining "tough" on offenders. Home detention, as the name implies, involves the confinement of offenders to their residence for a fixed period of time. To ensure compliance, offenders are electronically monitored, that is they wear an electronic bracelet with paging capabilities, and are required to telephone their community corrections officer from their home phone when paged.

Urinalysis is a common program provision (see below, Dialogue Box 16.1), with a positive detection of the substance in the urine leading to return to court. When comparisons have been made between offenders undertaking such programs and those completing routine probation supervision, however, there is little evidence that urinalysis leads to any reduction in subsequent recidivism (Petersilia & Turner 1993 as cited in Lurigio 2000). Indeed, there is some evidence that technical violations (breaching specified conditions) can lead to an increased pressure on prison resources (Turner, Petersilia & Deschenes 1998). It would appear that programs depending on urinalysis alone are unlikely to be effective in changing behaviour.

Community service offenders
Source: Department for Correctional Services South Australia website (www.corrections.sa.gov.au)

Dialogue Box 16.1

Criminal Behaviour and Drug Use

The strong statistical association between crime and substance abuse is widely acknowledged (McMurran 2001), though the mechanism linking the two phenomena remains controversial. In many jurisdictions it appears that a large proportion of offenders in community corrections are involved in personal substance abuse or selling or both. Does substance abuse cause offending? Does offending lead people into substance abuse? Or is it that both substance abuse and offending are caused by a third factor (for example, antisocial attitudes) with no direct causal link between the two? It is likely that all three causal links can occur. Few would doubt that heroin addiction has a significant causal role in relation to offending, particularly in relation to acquisitive offending (break-ins and so on) intended to finance the addiction. In any event, a large number of offenders in community corrections have problems of substance abuse and community programs have been developed to deal with them. The limitations of a purely punitive and custodial response to heroin and similar addictions are increasingly recognised.

More encouragingly, however, when active and well planned substance abuse rehabilitation is added to urinalysis, positive results have been achieved (see Lurigio 2000, for a review of rehabilitation strategies). Attention is being increasingly focused on the questions: what works best and for whom and in what circumstances (Day & Howells 2002) rather than on the question of whether rehabilitation works at all. Effective programs typically involve cognitive behavioural treatment methods such as cognitive skills training (improving the person's problem-solving abilities), relapse prevention (helping the person anticipate and plan for situations where relapse is likely) and pharmacological interventions (Methadone, Naltrexone and other medications). Many practitioners and researchers stress that this is an area of offender rehabilitation where a treatment approach is clearly required, that supervision alone is inadequate and that long-term intervention may be necessary for those with severe problems.

Wilderness adventure programs involve around-the-clock intervention with a small group of individuals in an isolated location (Gass 1993). The group operates as a self-reliant community. Such programs typically incorporate "adventure experiences" (rock climbing and/or abseiling), which are designed to have therapeutic outcomes (Crisp 1996).

The use of adventure-based programs has steadily increased since their origins in recreationally based camping in the late 19th century and, today, such programs are employed with many different groups, including both juvenile and adult offenders.

With respect to correctional populations, there is a paucity of research on the effectiveness of such programs (Hattie et al 1997). The majority of articles addressing outcomes in a correctional population rely upon descriptive or reflective methods alone. Findings have consisted of anecdotal reports of changes in self-confidence, and of "feeling good" while on the program. Experimental findings on changes in criminal attitudes and self-concept and related characteristics—for example, self-esteem, self-confidence, and self-efficacy—are inconclusive.

Arguably, Kelley and Baer's (1971) early research on Outward Bound programs enhanced interest in the use of wilderness therapy as a means of reducing recidivism in adjudicated youth. They reported a combined recidivism rate in the experimental group (wilderness therapy participants) of 20% compared with a rate of 42% in the control group (non-wilderness therapy participants) one year after parole completion, with differential effects for different forms of wilderness program. However, Nold and Wilpers (1975) reported that by five years there were no significant differences between the two groups (Castellano & Soderstrom 1992). An extensive review by Wilson and Lipsey (1998) concluded that the treatment programs showing the least consistent evidence in reducing recidivism for non-institutionalised serious offenders included wilderness/adventure programs. To date, there is no literature that has established long term changes in recidivism that can be attributed to participation in wilderness programs (Reddrop 1997).

Dialogue Box 16.2

"Scared Straight" Programs

"Scared straight" programs originated in the United States during the 1970s as a means of deterring young adult offenders from criminal behaviour. Programs typically involved the young offender being exposed to the harsh reality of prison life through a day visit to prison. Such programs are not theory driven and lack empirical validation, with accounts of efficacy limited to anecdotal reports from offenders. However they have political appeal and public acceptance, which is created by the media's biased portrayal of program outcomes (Petrosino et al 2000). This form of aversion program was adopted in Australia during the late 1970s despite the paucity of experimental evidence (O'Malley et al 1993).

O'Malley et al (1993) provided an account of a Victorian "scared straight" program —"A day in prison". The aim of the program was to provide participants with a firsthand experience of life in a maximum security prison with the aim that the experience would deter the young person from further criminal acts. Outcome studies demonstrated no significant attitudinal or behaviour change post-program and little impact on recidivism despite the traumatic reactions caused by the experience. Arguably the only program benefit was a change in prison culture as the program "created a team approach to 'deterring' young people from offending with both prison staff and prisoners playing key integral and mutually supportive roles"' (p 181).

Scared straight programs have been running internationally for the past 33 years and in this time only nine randomised experimental studies have been conducted. There is little evidence of the deterrent effects of the program; rather, some programs have lead to more harm than good (Petrosino et al 2000). In spite of these research findings, there is still international interest to employ deterrence based interventions within a correctional setting.

Restorative justice theorists advocate attending to the needs not only of the offender, but also those needs of the victim and the wider community. This is achieved through the active participation of all parties in the justice process, as well as promoting offender re-integration into the community (Marshall 1998). Furthermore, discourse between the offender and the victim is seen as promoting increased understanding of the antecedents and effects of crime, which, it is hypothesised, in turn, reduces recidivism (Umbreit 1998). For a detailed account refer to Chapter12.

Intensive supervision programs (ISP) or intensive correctional orders (ICO) place emphasis on control and surveillance (Mair 1996) while the offender essentially serves a period of imprisonment within the community (Auditor General 2001). This form of community-based imprisonment involves not only increased contact between the offender and their community corrections officer, but employs additional sanctions. Additional sanctions may include

> "...confining offenders to their homes, enforcing curfews, submitting offenders to random drug testing, requiring offenders to pay restitution to their victims, electronically monitoring offenders and requiring offers to pay for the privilege of being supervised." (Petersilia & Turner 1993, p 197)

ISPs have been criticised because they tend to target low risk offenders who would have otherwise received a normal probation sentence, thus there may be a "net widening" effect. In addition, offenders who do not comply with the condition of their order (for example, failing to comply with a curfew) may receive technical violations that may result in imprisonment. However, such technical violations have not been associated with more serious offending (Petersilia &Turner 1993).

There is little evidence to suggest that intermediate sanctions of any form have a significant effect in reducing recidivism. For example, Gendreau, Goggin and Fulton, (2000) conducted a meta-analysis of five forms of intermediate sanctions (ISP, restitution, scared straight, drug testing, and electronic monitoring) in Canada. The mean effect size of the intermediate sanctions was $\phi=0.01$. That is, offenders who completed an intermediate sanction had a recidivism rate 1% higher than offenders who did not complete an immediate sanction. Offenders completing "scared straight" programs (see above, Dialogue Box 16.2) had a mean increase in recidivism of 7%, whereas offenders completing restitution programs had a 2% decrease in recidivism, when compared with offenders not completing intermediate sanctions. Gendreau et al (2000, p 199) conclude that "the new get tough revolution in [community corrections] has been an abject failure when it comes to reducing recidivism".

The addition of a substantial rehabilitative (treatment/counselling) component to the ISP appears to be having a positive effect in reducing recidivism. For example, Gendreau et al (2000) reports that these rehabilitatively focused programs are associated with a 10% decrease in recidivism compared with no treatment ISP, which produced a 7% increase in recidivism.

SENTENCING OPTIONS: A CASE EXAMPLE

As an example of sentencing options open to the court, in Western Australia under the *Sentencing Act* 1995, the following options are available:

- No sentence — release of the offender
- Conditional release orders
- Fines
- Community-based orders
- Intensive Supervision Orders
- Suspended Imprisonment
- Imprisonment

Community-based sentences are in the form of Community-Based Sentence Orders (CBO) or Intensive Supervision Orders (ISO). CBO and ISO may include supervision, rehabilitation program attendance to address criminogenic needs (see below), community service, and for the latter may involve a curfew or period of home detention. Table 16.2 shows a breakdown of the most serious offence committed for which community-based sentences were issued.

Table 16.2 *Type of offences for which community-based sentences were issued in WA*

	Against Person	Burglary Robbery	Theft	Damage	Good Order	Motor Drugs	Vehicle	Other Unknown
CBO	586	9	1260	119	452	139	206	29
ISO	278	48	560	29	119	67	118	10

Source: Auditor General 2001, p 19

In Western Australia, typical offenders who complete a community-based sentence are described as

> "less than 30 years of age, unemployed and educated to year ten or less. Most have at least one previous conviction and many had their first contact with the criminal justice system at an early age. A significant number have a history of substance abuse." (Auditor General 2001, p 15)

The Western Australian case example highlights problems of supervision completion (refer below to Table 16.3) with only 43.3% of offenders completing their ISO in 1999, compared with 62% of offenders on CBO. The failure to complete an order was associated with high risk classification, substance use, early criminal careers, over ten previous convictions, and previous failure to complete a community-based sentence. In addition, only 41% of offenders who were required to complete a program did so, with 34% not participating in programs and 25% failing to complete the program. Program participation and/or completion was lowest for offenders with substance abuse problems.

Table 16.3 *Outcomes of Community Based Sentences In WA*

	CBO	ISO
Completion of Order	62.0%	43.5%
Completion of Community Work	71.4%	67.7%
Breach of Order (re-offending)	44%	56%
Breach of Order by High Risk Offender (re-offending)	60%	55%

Source: Auditor General 2001

THE WHO, WHAT, AND HOW OF REHABILITATING OFFENDERS IN THE COMMUNITY

Over the last 15 years there has been increasing international recognition that well planned interventions can be effective in reducing the subsequent recidivism of those exposed to the interventions. Canadian researchers have suggested that certain rehabilitation principles, if they are carefully observed, can add to the effectiveness of programs. These have become known as the Risk Principle, the Needs Principle, and the Responsivity Principle. These principles relate to the questions:

Whom should we treat?

Given that resources for intervention are typically stretched and inadequate in criminal justice systems, it is sensible to target our interventions at those who would most benefit — those at most risk of re-offending. According to the Risk Principle, it makes little sense to target programs at those who are very unlikely to re-offend anyway — those of low risk.

How do we assess risk?

Risk assessment involves attempting to predict human behaviour. There are two ways of doing this: clinical and actuarial methods. Clinical assessment is based primarily on the professional's judgment of the person's likelihood of re-offending. Actuarial (statistical) assessments are based on empirically established correlations between a risk measure and recidivism. Research investigating the ability of both methods to predict recidivism clearly shows that clinical judgments of risk are significantly more unreliable than actuarial assessments.

Scales intended to assess risk of re-offending have been developed. Most involve using information about the offender's crime and previous history of offending to provide a statistical probability of the person being reconvicted over a particular period. A scale might tell a community corrections officer, for example, that individuals that have a profile like offender X, have an 80% probability of reconviction. That is, for every 100 offenders 20 will not re-offend. A probability scale should be seen as an aid in professional judgment in that the Community Corrections Officer may have other information about the individual which might suggest, or not, that the offender will be in the 80% who re-offend.

What factors should we target in our rehabilitation efforts?

According to the Needs Principle, interventions should address factors about the person that are causally linked to their offending behaviour. Such needs are labelled *criminogenic needs* and should be the focus of intervention if our goal is to change offending behaviour. The person may have other needs that are non-criminogenic or factors that have only a weak relationship to their propensity to become involved in criminal behaviour. Non-criminogenic needs may include high levels of anxiety or distress.

A list of typical offender criminogenic needs (or dynamic risk factors) would include:

- having "pro-crime" attitudes and values,
- having criminal friends and associates (including living in neighbourhoods with high level of criminality),
- substance abuse,
- having features of "antisocial personality",
- high anger and hostility,
- impulsivity (not thinking of consequences of behaviour).

Many Australian community correctional systems are currently devising assessment methods for measuring criminogenic needs of this sort, often building on measures devised for use in Canada, the United Kingdom, and New Zealand. The results of the criminogenic needs assessment are then used to allocate the offender to the appropriate rehabilitation program that will address their particular needs. Common programs are discussed below.

How should we deliver programs?

The Responsivity Principle suggests interventions will be more effective if they are adapted to meet the learning styles and general characteristics of the particular group being treated. An example of a responsivity factor would be the presence of intellectual disability. An intervention such as anger management (see below) would need to be offered in a different way to individuals who would have difficulty in comprehending the program content or in acquiring new skills.

How do we assess responsivity?

The assessment of responsivity is less advanced than the areas of risk and need. A wide range of characteristics of the offender can affect her or his amenability to rehabilitation, including the extent to which the person is "treatment ready". One component of readiness is the level of motivation to address their offending behaviour.

The ethnicity of the offender is a very important, though neglected, aspect of responsivity. If it is not addressed, a rehabilitation program may be entirely inappropriate for the individual. This is a particularly important issue in the Australian context where a significant proportion of offenders in treatment will be from indigenous backgrounds. The responsivity principle requires that offender programs would be modified in content and mode of delivery so as to be suited to indigenous people.

AUSTRALIAN COMMUNITY REHABILITATION PROGRAMS FOR OFFENDERS

Most community corrections services in Australia offer rehabilitation and treatment programs for offenders in their care. The programs vary across the States to some extent but some programs are common, including

Anger management

See Howells et al 2002 for a review of anger management treatment.

Most Australian jurisdictions offer anger management programs, with some (for example, Western Australia) also offering treatment programs for violent offenders. There is limited research into the efficacy of these programs (see Howells et al 2002).

Dialogue Box 16.3

Jim: An Angry Offender in the Community

Jim has a history of offending extending back to the age of 13. He is currently 26 years old. He has two types of offence in his history — relatively minor acquisitive offences, typically involving thefts from shops and, more seriously, a series of assaults on neighbours, workmates and the police. The assaults have escalated over the years and he has, in the past, served a term in prison for a violent offence. He is at present serving a community corrections order with the requirement that he attend a group program for "Anger Management". The court and his community corrections officer took the view that his violence was the behaviour of most concern and that he needed to address his poor temper control in a therapeutic group. Jim was initially reluctant to accept that he had a problem, tending to blame others for what had occurred. A series of individual counselling sessions with his Community Corrections Officer focused on the consequences of his ways of dealing with what he perceived to be provocation. As a result of the counselling, he finally agreed to attend and participate in an anger management group provided by the community corrections service. This involved attending a weekly three-hour session over a period of ten weeks.

Jim attended the group with seven other offenders with similar problems. Each session consisted of a series of exercises, discussions and practice of skills. Jim learned to (1) identify what his triggers for anger were, (2) recognise what his typical anger-inducing thoughts were, (3) recognise the build-up of physical tension that preceded his angry outbursts, (4) control his anger through relaxation techniques, (5) practise alternative skills for dealing with others who provoked him, and (6) anticipate and plan how he would respond when a triggering situation arises in the future.

Jim participated fully in the program once his initial reluctance was overcome. He completed some psychological assessments before and following the program that showed that he had made some changes in his attitudes, thoughts and behaviour.

Note: Anger Management (AM) is one of the most common intervention programs offered to offenders in community corrections. AM has been well researched as a therapeutic method. The results suggest that it can be effective in changing angry behaviour, provided the person does indeed have an anger problem and provided the offender is motivated to address their behaviour: both of which conditions Jim meets.

Sex offender treatment

See Marshall et al 1998 for reviews of sex offender treatment.

Most Australian jurisdictions offer community-based sex offender treatment programs, with some jurisdictions offering a number of different treatment programs to ensure that offender responsivity is maximised. For example in Queensland there are five different programs available (pre-intervention program, sex-offender intervention program, sex offender treatment program, indigenous sex offender treatment program and community sex offender treatment program). There is little published evidence as to the effectiveness of Australian sex offender treatment programs. Lee et al (1996) reported significant treatment effects at a 12 month follow-up of a Victorian community-based sex offender program.

Cognitive skills programs

There are a number of cognitive skills programs currently being employed in Australian corrections. These include "Reasoning and Rehabilitation" (Western Australia), "Think First" (Victoria), "Thinking for Change" (Australian Capital Territory) and specifically modified programs (Northern Territory). Although overseas evidence suggests that cognitive skills programs are effective in reducing recidivism (Allen, MacKenzie & Hickman 2001; McGuire & Hatcher 2001; Ross, Fabiano & Ewles 1988), Australian evaluations are in their infancy.

Domestic violence interventions

Most Australian jurisdictions offer community-based interventions that target the perpetrator of domestic violence. Examples of programs include

"The Indigenous Family Violence program" (Northern Territory), "The Central Violence Intervention Program" (South Australia) and "Learning to relate without Violence and Abuse" program (Australian Capital Territory). There is a dearth of outcome studies on Australian programs.

Substance abuse programs

See Parks, Marlatt &Anderson 2001; Parks, Anderson & Marlet 2001 for treatment reviews.

All Australian jurisdictions offer community-based substance abuse programs. Again, little evidence appears to be available as to the effectiveness of these programs in an Australian context.

THE ROLE OF THE COMMUNITY CORRECTIONS OFFICER

Pivotal to the successful completion of community-based orders is the community corrections officer. Trotter (1996) investigated the effect of different supervision models — the pro-social approach (positive reinforcement for pro-social behaviour and providing pro-social role models), the problem-solving approach (solution orientated), and the empathetic approach (understanding and responding to the client's point of view) — on recidivism within a Victorian Community Correctional context. He concluded that the integrated supervision model, which combines all three therapeutic techniques, has the potential to reduce recidivism by 25% to 50%, compared with case managers who do not use these therapeutic techniques. The effect on recidivism of the case manager employing only one of these therapeutic techniques is less clear, however Trotter reports that the pro-social approach used in isolation has the ability to significantly reduce recidivism.

Graycar (2000) points also to the many challenges for Community Corrections Officers in Australia, for example the tension between therapy and punishment. Community Corrections Officers have a legalistic and surveillance role as well as a requirement to engage in a helping, therapeutic and problem solving role. Additionally, helping people who do not want to be helped is no easy task.

The stresses and difficulties met by community correctional professionals appear to have been exacerbated in recent years. Many community corrections systems struggle, in particular, with the problem of poor offender compliance. It is not uncommon, for example, for offenders to fail to keep appointments, to arrive outside of appointment times, to reject the advice and support offered by community corrections officers and to be reluctant to engage in therapeutic work. It is the impression of many working in community corrections in Australia and elsewhere that the population of offenders in community corrections is becoming a more difficult one with more severe problems of personality disorder, more serious substance abuse and more extensive offending.

PUBLIC ATTITUDES TO COMMUNITY CORRECTIONS

The extent to which community corrections can provide an alternative to incarceration for some offenders will depend, in part, on the perceptions of, and beliefs about community corrections that exist in the general public and amongst professionals working in the criminal justice system. Some have suggested that, to the extent that Community Corrections focuses on helping offenders, its mission is at odds with contemporary public attitudes. There have, however, been few studies of perceptions of community corrections.

It is possible that media pundits, politicians and justice system professionals over estimate the degree of punitiveness of the general public. It is easy to assume that people in the general community are likely to reject community corrections as too "soft" an option and indeed there is support for this. For example, in a critique of a recent newspaper survey of 10,000 South Australians, Israel (2001) observes that this sample generally felt prison was a more appropriate form of punishment than community-based options. On the other hand, in a survey of Perth residents, Indermaur (1990) reports that 45% of respondents supported community-based alternatives to imprisonment, with this percentage increasing to 75% for offenders who would receive short (three months or less) prison sentences (Israel & Dawes 2002). These studies highlight the heterogeneity of public perception, which arguably is driven by what is asked, of whom and at what time. Israel and Dawes (2002) contend that, although public perceptions are not homogenous, there is a tendency for "the vast majority of Australians" to support community-based correctional programming.

CONCLUSION

In this chapter the role of community corrections and some of its components has been reviewed. Different approaches and philosophies have come into and gone out of fashion, reflecting the views and values prevalent in particular eras. Practice in Australia has, in general, been consistent with, has influenced, and has been influenced by models of community corrections around the world. How community corrections will develop in the future in Australia is difficult to predict, however, the current emphasis on evidence-based practice and on "what works" programs is likely to endure.

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QUESTIONS

1. Interview three friends about their views of community corrections. How do their attitudes compare with those discussed in this chapter?
2. What might be the advantages and disadvantages of electronically monitoring offenders in the community?
3. Compare and contrast the philosophies underlying prisons and community corrections.
4. In your opinion, what crimes are appropriate for dealing with by community corrections? Discuss your opinion with others.
5. Are community corrections merely a "slap on the wrist"?

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USEFUL WEBSITES

www.aic.gov.au/research/corrections/
Australian Institute of Criminology

www.csc-scc.gc.ca/text/pblct/forum/index_e.shtml
Correctional Services Canada

www.virlib.ncjrs.org/Corrections.asp
National Criminal Justice Reference Service

CHAPTER 17

CRIME PREVENTION AND REDUCTION

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KEY WORDS
- crime prevention
- CPTED
- environmental
- situational
- social prevention

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INTRODUCTION

Crime prevention is as old as crime itself. In all societies, people have tried to protect themselves and others from assaults and abuses. The very concept of property carries with it provisions and procedures for helping owners or custodians safeguard what they see as theirs. However, prevention did not begin to emerge as a distinct policy theme in Western European democracies until the late 1970s. Schemes that involved central and local authorities working together to identify and address causes of offending were developed first in Sweden, then in countries such as France, the Netherlands and the United Kingdom. By the 1990s Canada, New Zealand and Australia had announced initiatives.

This chapter begins with a definition and overview. Environmental (or opportunity reduction) theories and techniques are contrasted with social prevention. Approaches taken by other countries are described to help readers understand how local thinking has been influenced. Specific Australian strategies and debates are then canvassed. Overlaps between crime prevention and drug harm reduction are briefly discussed. The chapter concludes by reviewing the politics and symbolism of crime prevention. The purpose is to introduce key issues and themes. Interested readers can continue exploration by consulting references and websites at the end of the chapter.

DEFINITIONS AND TECHNIQUES OF CRIME PREVENTION

What is Crime Prevention?

The term "crime prevention" can be applied to a vast range of activities. Our starting point is a definition provided by Dutch criminologists Van Dijk and De Waard (1991, p 483):

> "The total of all private initiatives and state policies, other than the enforcement of criminal law, aimed at the reduction of damage caused by acts defined as criminal by the state."

The key to this conceptualisation is the phase "other than the enforcement of criminal law". For Van Dijk and De Waard — and for us — the essence of crime prevention is that it strives to develop alternatives to police and other criminal justice interventions. Crime prevention is about dealing with issues "upstream", before they have a chance to develop into "downstream" problems that require justice agencies to be invoked.

Approaches to crime prevention can be classified under two broad headings. One is environmental prevention, which relies on modifying physical environments in which crimes can occur. The second is social prevention, which aims to modify background factors that render some people far more likely to commit offences than others. Both these headings encompass a variety of approaches, which reflect different understandings about causes of crime. We begin with environmental prevention.

Environmental Prevention

This applies to two quite different sets of schools and techniques: broad-based urban planning/architectural design and focused ("situational") prevention.

Broad-Based Planning and Architectural Design Approaches

The idea that physical environments influence whether or not crime occurs has a long history. The modern thinker who did most to revitalise it was Jane Jacobs. In a 1960s book *The Death and Life of Great American Cities,* Jacobs argued that unrestrained commercial and industrial development had caused inner areas in most major United States cities to be characterised by high rates of crime, unemployment and other social problems. Her proposed solution was to revitalise these zones by reintroducing residential users and taking advantage of planning and other mechanisms to ensure 24 hour-a-day activities. Jacobs believed that the more human presence and activity in any area the greater the "natural surveillance" ("eyes on the street") and potential for social control.

Another key figure in environmental prevention is Oscar Newman. Newman's (1972) work focused on architectural solutions to crime in and around public housing. He contended that it could be reduced by dividing relevant territory into smaller lots over which residents could exert control. Better design would help reduce not just major crimes like burglary but minor incivilities, such as vandalism, that undermine quality of life.

Dialogue Box 17.1

Oscar Newman's key architectural design concepts

Creating defensible space	Defining "private areas", such as backyards, garages, secure entrances, and closing streets to traffic.
Minimising anonymous common areas	These include stairways and walkways where people cannot be challenged. Such spaces often are vulnerable to graffiti and vandalism and can be perceived as "no go" zones.
Assigning amenities and recreational areas unambiguously	Give each key group of residents (for example, parents and infants, the elderly, teenagers) their own spaces for recreation

	and socialising, rather than leaving it for people to "sort out themselves". Conflicts over space can escalate into harassment and even crime. Areas will be abandoned by the very people who could have done most to prevent offending.
Creating "zones of transition"	Use different textures, lighting, or colours to warn strangers they are entering private areas. Zones of transition make it easier for residents and other authorised people to keep an eye on an area, and helps legitimate their challenging individuals who seem to be intruding.

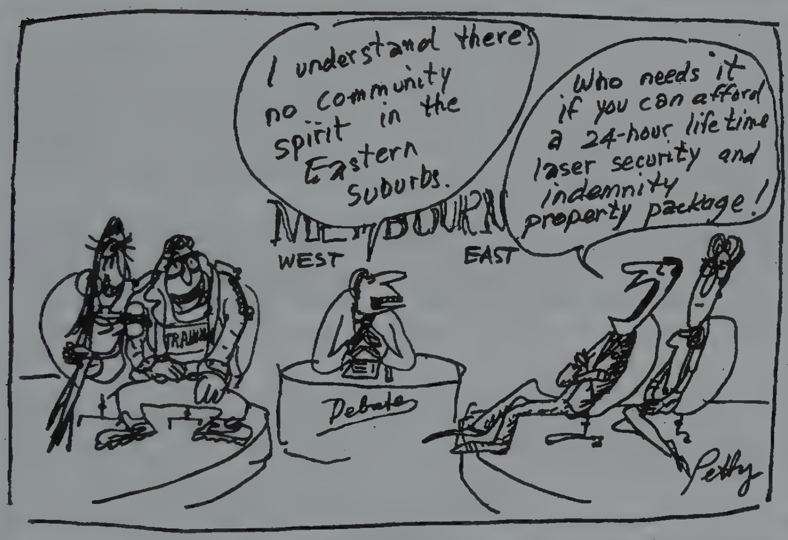
Focused (Situational) Approaches

Writers like Jacobs and Newman have been very effective in making architects, planners and some developers more aware of the need not to "build crime problems in" to residential and other urban developments. Their work stimulated development of a whole new field, *Crime Prevention Through Environmental Design (CPTED)*. Some researchers and practitioners seem convinced that CPTED can eliminate crime from virtually any location (Crowe 2000). However, independent reviews (for example, Taylor & Gottfredson 1988) suggest that impacts of these techniques tend to be "moderate to weak". Some opportunity reduction theorists have shifted away from architecture and planning towards more focused approaches aimed at resolving specific problems in particular locations (for example, "crime hot spots"). Ron Clarke, who coined the term "situational crime prevention", pioneered this approach.

Situational crime prevention rests on "rational choice" theory, which views offenders as actors who weigh up potential gains, risks and costs. Originally Clarke condensed situational crime prevention into three principles (1) increasing efforts, (2) increasing risks, and (3) reducing rewards for crime. Later Clarke and Homel (1997) added a fourth: removing excuses. They argue that many offences only occur because those concerned can "rationalise" their actions as "not really so bad". Crime can be reduced, therefore, by introducing mechanisms that instil feelings of guilt, shame or embarrassment when an act is contemplated.

Situational prevention has generated many "success stories". Examples include: using target hardening, cameras and reduced cash handling in banks to combat armed robbery; Telstra Australia's redesign and relocation of public telephones to reduce theft and vandalism; tagging and bar coding to prevent shop lifting; fences and security doors to control entry and exit from buildings; the New York Metro's elimination of graffiti through increased surveillance and removing carriages from circulation as soon as they are defaced (thus depriving artists of the reward of recognition); and reducing retail refund frauds through requiring proof of purchase (Clarke 1997).

But there are limitations. Focused situational approaches can only reduce offending on a very local scale, or in identified "totally controlled" facilities such as shopping centres, office blocks and airport terminals. Many critics argue that it merely displaces crime, meaning offenders move to other less well protected targets. Better protection for banks may simply result in less secure facilities, such as convenience stores, being robbed. Displacement is a particular problem if it occurs along class lines, redistributing victimisation away from the wealthy who can afford situational prevention (such as burglar alarms or closed circuit TV systems) and toward the less affluent (see Von Hirsch, Garland & Wakefield 2000).


I understand there's no community spirit in the Eastern suburbs.
Who needs it if you can afford a 24-hour life time laser security and indemnity property package!
WEST
EAST
Debate
Petty

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Situational theorists contest these issues, pointing out that displacement is by no means inevitable and that focused opportunity reduction also can result in "diffusion of benefits". Surrounding areas may also experience less crime (Clarke & Weisburd 1994).

Social Prevention

Social prevention focuses on values and discipline systems that influence whether people commit crimes. The term can apply to almost any program that tries to affect the socialisation of individuals or groups seen as having potential to offend. We divide social prevention into five schools:

- Community development
- Institutional or agency-based prevention
- Diversion programs
- Media and other education campaigns
- Developmental prevention: early intervention and programs that address risk and protective factors.

This typology is one among many (Crawford 1998).

Community Development

The fact that crime is concentrated in some regions has given rise to the idea that the dynamics of particular communities shapes and influences rates of offending. Crime is seen as a product of "community disorganisation". Informal family, friendship and employment ties and networks, which can discourage and sanction antisocial behaviour, are argued to be much weaker in high crime localities. Where neighbourhood ties and networks are relatively weak far fewer people will sanction or "shame" delinquent behaviour. Strengthening informal networks (for example local sporting, voluntary and church groups) that are dominated by "prosocial" values may help make younger people, in particular, less likely to offend.

Advocates of community development argue that initiatives cannot be implemented in "top down" fashion, by outside organisations or groups simply pumping in funds or welfare assistance. Funding is important, but initiatives must first come from *within* the community. Relevant approaches entail:

- *Strengthening informal networks*: involving young people in extended family systems and providing support and discipline for those whose immediate families have broken down (for example, mentoring programs — see the United States Office for Juvenile Justice and Delinquency Prevention (OJJDP 1998)).
- *Building local employment opportunities*: here the focus is on creating opportunities *within* communities. Relevant jobs must have potential for upward mobility. There is less value in providing work that removes individuals from their neighbourhoods, leaving the areas where they live unchanged.
- *Enhancing community structures*: this involves increasing opportunities to participate.

A problem with community development is that "change from the grass roots up" depends on willingness and capacity to work together. Such co-operation often is lacking in highly disadvantaged neighbourhoods (Hope 1995). Community development also can underestimate the extent to which broader factors undermine cohesion. Strengthening local networks may be of limited value if a neighbourhood is subject to problems beyond its control. Problems can include flight of capital (private business will not invest), exploitative absentee landlords, racist attacks, a degraded educational system or unsympathetic, aggressive police.

Institution or Agency-Based Prevention

Criminologists have long been aware that some groups (for example, young people, migrants, the working class or unemployed) tend to be marginalised or excluded from mainstream institutions. Schools have been a major concern. Those that focus excessively on assessing, grading and ranking academic or sporting achievements can marginalise many young people. Individuals who do not "measure up" may seek alternative avenues for self-esteem. This can entail "deviant" affiliations (for example, gang membership) and daring activities that aim to inspire admiration, fear and respect (Polk 1997).

Institutional or agency-based prevention seeks to reshape institutions so that they operate more inclusively. In a school environment, the key is to be less concerned about competition and grading and to concentrate on engaging with the practical needs and interests of students. Bridging the gap between education within the school and training and work outside the system, can help reduce alienation among young people who do not fit into highly competitive, success obsessed environments. However, agency-based prevention need not be confined to schools. It applies also to workplaces, sporting clubs and cultural associations. It has relevance for the work of local, State and Federal authorities.

Diversion

This approach stems from the idea of diverting young offenders out of the court system and into programs to address "deficits" that may have contributed to their offending. Such "deficits" can include low self-esteem, lack of self-discipline, loss of attachment to family or school and lack of social or vocational skills. Nowadays, diversionary schemes do not only target young people who have come to the attention of police. They have been extended to wider populations — for example, children from disadvantaged areas and backgrounds. Here again the aim is to remove young people from social environments perceived as "negative" and engage them in "character-building" activities (for example, wilderness programs, camps and hikes).

Diversion philosophies inform a number of sport-based prevention initiatives (Cameron & MacDougall 2000). Often programs are underpinned by the rationale that crime occurs when young people are bored. A problem here is that offending rarely is an alternative to passive pastimes such as watching television. Crime generally is active, exciting, challenging and absorbing — a way for young people to achieve an unconventional "deviant" or "rebellious" status and win admiration from peers. Going to a drop-in centre, playing games or even helping stage a play may just not compete.

Research by Castellano and Soderstrom (1992) indicates that diversion can have immediate impacts, but its effect drops away sharply in the longer term. A "one-off" experience may remove young people from problem environments but do nothing for them once they return. It is essential that when diversionary schemes are developed there be consistent follow up to ensure that ongoing life chances (to do with school, family, recreation and employment) improve.

Media and Other Education Campaigns

Mass media-based and other education has long been used to change values that lead to or help justify problematic behaviour. Public health experience suggests such campaigns can bring about significant shifts (for example, reduce smoking, binge drinking, drink driving). In crime prevention, they have been used to change attitudes about violence both in public and private. Examples include Victoria's "violence is ugly" and "stop the violence" campaigns.

Mass publicity is not the only way to change values and behaviour. More specifically targeted programs also can be developed. Examples include campaigns in primary schools to reduce bullying and in the workplace to reduce harassment. While publicity and education can be useful for raising awareness about crimes such as family violence, technological and language barriers often mean that they have difficulties reaching the disadvantaged individuals and communities that may need them most.

Developmental Prevention: Early Intervention and Addressing Risk and Protective Factors

Factors evident early in life may contribute to the onset of delinquency (Farrington 2000). Termed "risk factors", they can relate both to the individual (for example impulsivity, poor social skills, and school failure) and to the social environment (for example crime in the family, inadequate child rearing, a broken home and stresses associated with parental separation). Researchers such as Hawkins (1999) and Farrington (2000) claim also to have identified "protective" factors that buffer exposure to risk and inhibit offending. Protective factors include such things as school achievement, social skills and competence, family harmony, a prosocial peer group and community involvement.

We use the umbrella term "developmental prevention" to refer both to practices based on risk and protective factor theory and to those that focus on early childhood interventions. All are underpinned by the assumption that experts can and should identify potential offenders early and do things with (or to) them.

Dialogue Box 17.2

The Perry Pre-School

One of the most frequently cited early childhood interventions. Operating in the early 1960s for two years, Chicago's Perry pre-school program aimed to reduce school failure among children deemed "at risk", due to gross socio-economic disadvantage. The pre-school component focused on problem solving and general intellectual skills. Other interventions involved parental training and home visits. Education and other records of children involved in Perry were compared with a control group. Children in the program tended to perform far better in formal education. A side benefit was that even as young adults they seemed less likely to be arrested or become welfare dependent. It was estimated that every one US dollar spent on the program saved 5 dollars in welfare and criminal justice costs (Schweinhart, Barnes & Weikart 1993).

Pathways to Prevention, a report commissioned by National Crime Prevention (see below) has done much to popularise developmental prevention in Australia (Developmental Crime Prevention Consortium 1999). Most States and Territories have expressed interest. However, targeted interventions also pose dangers. Identifying groups or individuals as "at risk" can stigmatise them. This occurred with the US Cambridge–Somerville Project. Here, experts used schoolteachers to help identify teenagers who were "pre-delinquent". Half these young people received intensive support. However the young people "treated" did far worse than those left alone. They had higher rates of suicide, experienced less educational success and even seemed to have fewer social skills. They also tended to accumulate more extensive criminal records. It seems these young people had internalised the judgments of teachers and researchers. They lived out the belief that they were "delinquent" (McCord & McCord 1959). Clearly there are lessons. Prevention must be delivered in non-stigmatising ways, and we must be wary about establishing programs that cater only for "potential delinquents".

INTERNATIONAL AND AUSTRALIAN EXPERIENCE

Australia's rediscovery of crime prevention in the 1980s owes much to perceived success elsewhere. We review three jurisdictions — France, the Netherlands and the United Kingdom — that have been influential. Students wanting more information should use the references and websites at the end of this chapter. A word of caution, however, no strategy should be viewed as a package that can simply be copied. Each country's approach reflects, and is made possible by, unique cultural, political and administrative traditions.

France

The renaissance of crime prevention in France began in the early 1980s with the so-called "Bonnemaison" scheme: a national prevention agenda that focused on problems of exclusion — especially among young people, immigrants and the unemployed. Bonnemaison emerged out of public and media anxieties about a perceived crime wave during a long summer vacation period. Young people from disadvantaged backgrounds were involved in car thefts, drag racing and alleged "near riots". For a newly elected Socialist government such incidents provided the occasion to demonstrate that its policies — based on principles of social integration and co-operative action at the local level — were more effective than predecessors' reliance on law and order (Crawford 1998; Pitts 2001).

The first response was introduction of an *Etes-Jeunes,* summer program that tried to ensure that all young people could participate in structured holiday activities. To reinforce political commitment to inclusion the French government also set up a network of national, regional and communal councils whose role was to facilitate partnerships between the different levels of government. Local crime prevention councils developed and signed one or two year "prevention action contracts" with the national government.

A key theme of all contracts was to reduce minority group alienation. Initiatives include: community development on housing estates; specialist neighbourhood centres to link young people with training, work and cultural opportunities; establishment of local crime prevention teams; diversionary projects; and situational measures such as security upgrades for high-rise housing. Evaluation was not given high priority, but rates of reported crime levelled out during the initial years (Crawford & Matassa 2000).

The Netherlands

The Netherlands embraced crime prevention in 1985, the key strategy document being *Society and Crime* (Dutch Ministry of Justice 1985). Emergence of prevention as a distinct policy was prompted by concerns about rising crime rates and erosion of a consensus on ways to deal with offending. During the post-war era, Dutch governments generally have favoured low imprisonment rates and an unobtrusive criminal justice system (Downes 1998).

Dutch initiatives include: employing young people to act as "city guards" and as safety, information and surveillance officers on public transport; addressing truancy through the development of computerised attendance registers and early warning schemes and provision of remedial and vocational skill classes; and counselling and support for "at risk youth". The Dutch have had a strong commitment to evaluation and evidence suggests that some schemes did achieve significant declines in target crimes, as well as helping address public safety concerns (Crawford 1998; Willemse 1994). More recently, the Netherlands has embarked on projects to prevent organised crime, and policies that make crime prevention part of broader strategies to address social exclusion and urban regeneration (Crawford & Matassa 2000).

United Kingdom

The United Kingdom has been experimenting with crime prevention since the 1980s (Crawford 1998). Laycock and Clarke (2001) argue that British developments have been strongly influenced by Home Office research (see website listed below). Two major initiatives will be reviewed here: the *Crime and Disorder Act* and the current *Crime Reduction Program*.

The *Crime and Disorder Act* 1998 imposes a duty on police and local authorities (for example housing, health and educational authorities and councils) to work together to implement schemes. Strategies must be based upon an in-depth review of local crime problems and involve community consultations.

To supplement this legislative framework the Labour government has invested £250 million over three years in a *Crime Reduction Program*. The program covers the following areas:

- working with families, children and schools;
- tackling crime in communities, particularly high-volume crime such as domestic burglary;
- developing products and systems that are more resistant to crime;
- more effective sentencing policies;
- working with offenders to ensure they do not re-offend; and
- closed circuit television initiatives.

Extensive evaluations have been commissioned (see Home Office 1999).

Reviewing international experience, it is important to be aware that each country's approach reflects unique preoccupations and priorities. France conceived of crime prevention as part of a broader political agenda to address social exclusion and ensure urban renewal. The British have tended to be much more project oriented and to focus upon crime in isolation. The Netherlands started with a project focus but now is endeavouring to integrate crime prevention into broader social policy. These differences are important. They have major implications for the ways governments approach prevention. Ultimately a national, State or local scheme cannot just be technical and administrative. It must also be political. Crime prevention requires value judgments about what offences are to take priority, what methods will be adopted and even what victims receive most protection and assistance.

Australia

Crime Prevention at the Federal Level

National position papers on crime prevention were published as long ago as 1992 (Federal Justice Office 1992). In 1996 a Liberal/National coalition government implemented its own strategy that came to be known as *National Crime Prevention (NCP)*. The NCP had $13 million allocated to it between 1996 and 1998, and in 1999 $21 million was committed for a further triennium. Priorities have been: identifying best practice and training needs; researching evaluation, fear of crime, residential burglary, sexual assault and domestic violence prevention; and exploring early intervention techniques and crime prevention for young people and indigenous communities. *National Crime Prevention* commissioned work aimed at addressing violence in indigenous and other rural communities (Blagg 1999) has been particularly valuable.

Critical observations have been made about the *NCP* program. Catalano (1999) argues that it lacks clear objectives and targets against which effectiveness can be measured. Sutton (2000) contends that the strategy fails to repudiate the political emphasis on law and order, with *National Crime Prevention* seeing itself merely as a provider of expert advice. This apolitical stance has meant that prevention fails to question or challenge Federal and State government policies that dismantle or reduce education, health, welfare and other social infrastructure.

Dialogue Box 17.3

Crime Prevention and Drugs

Much offending is associated with drugs. An entire sub-technique of *Situational Prevention* — "removal of facilitators" — concentrates on restricting access to substances (for example banning alcohol from sporting events, or from some high-risk communities). One of the most frequent facilitators of offending is a legal drug: alcohol (for example see Mason & Wilson 1989). However, the drugs-crime nexus also includes illicit drugs such as cannabis, heroin, amphetamine and cocaine (Makkai 2000). The fact that these substances are illegal means that production, distribution and use are offences. Prohibition increases the likelihood that criminal groups will dominate production and distribution, and use violence and threats to protect or expand franchises and ensure debts are paid. Requiring enforcement authorities to suppress an industry that generates massive profits increases corruption. Some heavy users of heroin and other "hard" drugs resort to sex industry work, or to predatory crimes such as shop and other theft, robbery and burglary, to finance their habit (Grapendaal, Leuw & Nelen 1995). Australian government Ministers responsible for drug issues recently announced a *National Prevention Agenda* (Ministerial Council on Drug Strategy 1998). This Agenda seeks to implement developmental programs to delay or prevent the onset of drug use and associated risky or harmful behaviour. It is not without dangers. As noted earlier, there is little empirical evidence that "at risk" individuals and groups can be targeted discretely and without adverse labelling problems. A more effective way to reduce drug-related crime may simply be to repeal prohibition or to change the way laws are administered. Switzerland's decision in 1994 to prescribe heroin for heavy users seems to have reduced both demand and associated crime (Killias & Aebi 2000). The Netherlands, which has decriminalised illicit drug use and tacitly permits some heroin users to sell to other users, seems to have lower rates of drug related predatory crime (for example robberies, shop theft) than the United States, which is prohibitionist (Grapendaal, Leuw & Nelen 1995).

Crime Prevention at the State and Territory Level

Australia's State and Territory governments have assumed primary responsibility for prevention. South Australia and Victoria were the pioneers. South Australia's 1989 initiative — *Together Against Crime* — adopted a model of local committees inspired by France's Bonnemaison scheme. Committees were invited to develop two-year plans based on assessment of local problems and capacities. Ten million dollars was allocated for the first five years. South Australia also embarked on the development of "exemplary" projects in urban planning and design, alcohol related crime, family violence, crime computer mapping and problem-oriented policing. Difficulties encountered during the early stages of *Together Against Crime* include lack of strong State-level political and administrative commitment. This led to conflicts over resource allocation. After a highly critical, but much contested, assessment of the strategy's first five years (Presdee & Walters 1997; Sutton 1997) South Australia now is trying to encourage local committees to adopt problem solving frameworks (Panton 1998).

Victoria also has a long history in crime prevention. In 1985 it was the first State to initiate Neighbourhood Watch. It was also the first in 1988 to involve local government in crime prevention through a *Good Neighbourhood* program. The trend continued in 1991 with the launch of a State-wide strategy framework (*Vicsafe*) and a *Safer Communities Pilot Program*. In 1997, a fresh strategy, *Safer Cities and Shires*, was implemented and in 2002 a recently elected Labor government announced yet another new scheme, *Safer Streets and Homes*. Clearly Victoria, like South Australia, has seen many shifts. At the academic level, there is very little agreement on what these and other initiatives might hope to achieve.

Dialogue Box 17.4

Australian Debates

Renewed Australian interest in crime prevention has triggered a variety of responses. Some criminologists have concentrated on identifying best practice. Much of this work has been sponsored by organisations such as *National Crime Prevention* (Developmental Crime Prevention Consortium 1999) and the *Australian Institute of Criminology* (Grant & Grabosky 2000). Others have been sceptical. For Coventry, Muncie and Walters (1992), focusing on crime as *the* social problem distracts attention from more important issues such as access to education, work and cultural resources. Hil (1999) argues that because they ignore the "bigger picture" crime prevention advocates and practitioners are unwitting agents of social control. Pat O'Malley (1994) sees crime prevention as part of a late modern shift toward decentralised and dispersed modes of governance. The state no longer accepts preventing crime as its primary role, and individuals and local communities are encouraged to take greater responsibility. O'Malley does not simply equate prevention with social control. However he is concerned that in the "neo-liberal" era crime prevention strategies and programs will complement, rather than provide genuine alternatives to, law and order. These concerns are shared by the authors. From reviewing crime prevention both in Australia and other Western countries, however, the authors are convinced that it has its origins in attempts by the "left" to develop a viable political alternative to law and order (Sutton & Cherney 2002). Focus should be on ensuring that crime prevention "works" not just as a set of techniques, but as a political reaffirmation that complex societies can deal with problems without excessive resort to imprisonment, punishment and exclusion.

One constant is that Victoria's programs have emphasised social rather than environmental prevention. As in South Australia, frequent policy changes and lack of unequivocal political support have made it impossible to demonstrate that crime prevention has been effective (Sutton & Cherney 2002).

Table 17.1 *Federal and State Crime Prevention Units*

National Crime Prevention	www.ncp.gov.au/ncp
SA Crime Prevention Unit	www.cpu.sa.gov.au
Crime Prevention Victoria	www.crimeprevention.vic.gov.au
NSW Crime Prevention Division	www.lawlink.nsw.gov.au/cpd.nsf/pages/index
Crime Prevention Queensland	www.premiers.qld.gov.au/about/community/crimeprevention.htm
Tasmanian Crime Prevention Community Safety Council	www.police.tas.gov.au/police/police2001.nsf
Safer WA	www.saferwa.wa.gov.au

CONCLUSION

The Politics and symbolism of Crime Prevention

Australian governments first exhibited interest in crime prevention in the late 1980s. The recipe for success seemed straightforward:

- Identify national and international "best practice" for dealing with high priority offences; and
- Implement and evaluate these approaches throughout a jurisdiction.

The "commonsense" of this approach has inspired numerous inventories of crime prevention "success stories" — the most authoritative being Sherman et al's *Preventing Crime: What Works, What Doesn't, What's Promising* (1997). The Australian Institute of Criminology has published similar lists (Grant & Grabosky 2000). However, simply trying to reproduce best practice overlooks three key issues: implementation challenges, the environments in which success was achieved, and the symbolism of crime prevention.

Implementation Challenges relate to the need for some individual or group to accept "ownership" of a problem. Telstra's reduction of public telephone vandalism costs during the late 1980s from $18 million to $7 million may be the greatest single crime prevention "success story" in Australian history. As Dennis Challinger (1991) points out, however, the secret to this breakthrough did not lie in discovery of new techniques. It resided in a decision by Telstra to undertake major organisational restructuring, so that responsibility for the public telephone network no longer was dispersed through 17 separate divisions. Only once this had been achieved did Telstra begin systematically to apply crime prevention.

Relevance of environments relates to the fact that most crime prevention "success stories" have arisen out of unique circumstances. Much is made, for example, of the success of Perry Pre-School and other early childhood interventions in the United States (see above, Dialogue Box 17.2). What advocates of "developmental" approaches often do not mention is that few people experience such high levels of disadvantage and such meagre levels of public support as some minority group children in United States. Cost benefits from similar approaches in Australia are likely to be much lower.

The symbolism of crime prevention relates to the need for prevention to present viable *political* alternatives to "law and order". Most criminologists argue that more police on the streets and tougher penalties are no guarantee that crime will be reduced. However politicians are convinced that law and order "works" in attracting votes. It is symbolically effective: it is a powerful mechanism for conveying impressions of powerful, "no-nonsense" leadership. This explains why both major parties in Australia endorse it, and why criminal justice attracts massive funding. Crime prevention advocates must recognise that if their preferred approach is to achieve similar recognition and resources, it too must "work" at the symbolic level. Few commentators have addressed this issue (but see Freiberg 2001).

Perhaps it is time for Australian governments to put aside "success story" recipe books and adopt a more policy-driven approach. This was the route taken by countries such as France, Sweden and Denmark — and it seems no coincidence that France's Bonnemaison scheme did most to awaken Australian interest. Embracing a policy-driven framework means that criminologists and policy makers must recognise that crime prevention is first and foremost political. For it to "work" requires commitment at the outset to articulating an alternative vision to law and order. It also requires strong central commitment to devolving resources, information and decision-making powers so that individuals and local communities can engage in the problem identification and solving that is the key to crime prevention success.

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QUESTIONS

1. Analyse the strengths and weaknesses of the different approaches to crime prevention. Which offers best prospects for achieving lasting reductions in crime?
2. Outline *environmental* and *social* initiatives that might help deal with the Australian epidemic of motor vehicle theft. Then visit the *National Motor Vehicle Theft Reduction Council* website (at www.carsafe.com.au) to compare your ideas with Australia's "official" program.
3. What might be done to reduce high levels of violent and other crime in some remote Aboriginal communities? Then visit the *National Crime Prevention* website (at www.ncp.gov.au) and assess its approach.
4. "Australia could significantly reduce crime rates simply by changing the ways it tries to deal with illegal drugs". Debate this statement. Does the Dutch approach offer an alternative that Australia should consider?
5. Go to the Sherman report listed below under Further Reading. The report claims to have identified "what works", "what doesn't work" and "what's promising" in crime prevention. Discuss the relevance for Australia.

6. Can Australia learn from prevention experience overseas, or should we stop trying to copy others, and focus on our own unique problems, successes and failures? Argue for one or other of these views.
7. "Crime prevention is political". Critically discuss this statement, and explore how crime prevention may be "political" in all senses of the word.

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USEFUL WEBSITES

www.crime-prevention-intl.org/
International Centre for the Prevention of Crime

www.homeoffice.gov.uk/index.htm
UK Home Office

CHAPTER 18

Victims and Criminal Justice

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KEY WORDS

- Criminal Injuries Compensation Schemes
- secondary victimisation
- Victim Impact Statement
- Victim's Charter
- victim's lobby
- victim-offender mediation

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Introduction

Throughout much of the history of the Australian criminal justice system, victims have been excluded from the criminal justice process. Offenders were put on trial, not because of any harm that they had done to a victim but because, in causing harm to another, they had broken the laws of the state. The trial was seen as a contest between the state as prosecutor and the offender as defendant. The victim had only a minor place in this contest.

Although different victims are dealt with by the criminal justice system in divergent ways, researchers have identified some common problems in the way victims have been treated. Research in victimology in North America and Europe found that victims were largely dissatisfied with their treatment by the criminal justice system and that their level of dissatisfaction rose the more they saw of the system. Indeed, some commentators on the treatment of victims by the criminal justice system have gone so far as to describe what happens as *"secondary" victimisation* (Greenberg & Ruback 1985). First, victims suffer at the hands of the offender; secondly, they suffer in the arms of criminal justice bureaucracies. In some cases, of course, the original crime may have been perpetrated by members of criminal justice institutions.

Over the last 25 years in Australia, some attitudes towards victims have changed. Groups representing victims of crime — both government and voluntary organisations — have pressed for greater support for victims. They have asked for victims to have: greater involvement in prosecution and sentencing; more information about how and why the case against the offender proceeded in the way that it did; and improvements in the provision of compensation, counselling and other support.

In the 1980s, South Australia, New South Wales and Victoria responded by establishing official inquiries to investigate victims of crime. These three States then issued administrative guidelines in the form of Declarations or Charters of Victims' Rights on how victims should be treated in the criminal justice system. Partly as a result of this, some changes *have* taken place, but any shifts that have occurred have been both hesitant and uneven between and within jurisdictions, institutions and between different kinds of victims. This chapter examines how the police, courts and correctional services have responded to the needs of victims.

POLICE AND VICTIMS

The first contact that most victims have with the criminal justice system comes through the police. In one South Australian study (Gardner 1990), victims told interviewers that, in general, they were reasonably happy with the work of the police. Indeed, over 85% reported that the police's attitude towards them had been satisfactory. Similar results were obtained in an unpublished survey by Queensland police in 1996 and 1998. However, in other States — including both Victoria and New South Wales — police have come under far more criticism: first, they have been attacked for their failure to act to help victims; secondly, for the way that they have acted; and thirdly, for the limited range of services that they have been able to offer victims. As a result, the New South Wales Task Force on Services for Victims of Crime (1987) found that 46% of victims were not happy with the way the police had dealt with them.

In investigating a case, police officers may find themselves having to provide support for victims that goes a long way beyond traditional views of policing as "crime-busters". Many police officers do this willingly.

However, some do not. David Bayley (1989) believes that despite a strong current of opinion among police against "social work", "some police forces are cautiously learning to make a virtue of this necessity, and even encouraging its growth." For example, some police departments like New South Wales and Victoria have created a set of guidelines to help change the way that all officers deal with victims. Other States have also set up specialist units to deal with particular groups of victims.

One area where police departments have tried to improve their work has been in the way they provide victims with information about the progress of their case. As we have already seen, Julie Gardner's research (1990) revealed that the vast majority of victims were satisfied with the attitude of the South Australian police. However, other researchers, including the Victorian Community Council Against Violence (1994), have found that police have been less sympathetic to particular kinds of victims: those people who are victims of particular crimes (such as hate crime, domestic violence or sexual assault), and those victims who are members of marginalised minority groups (particularly those defined according to ethnicity, race, sexuality or disability). For example, a 1997 report by the Centre Against Sexual Assault in Melbourne concluded that victims of sexual assault were quite likely to face hostility or disbelief when being interviewed by Victorian detectives.

There has been a shift in the way that police departments perceive their role. In some cases, they describe themselves as a police service rather than a police force. Instead of seeing themselves as simply orientated towards combating crime, many departments are now starting to consider the needs of some of their clients, including those people who are victims of crime. However, although there is a lot of evidence that some of these changes have been appreciated by victims, other changes have been less successful — partly because many officers are still ambivalent about their relationship with victims, and partly because police departments have misunderstood the needs of some or all groups of victims.

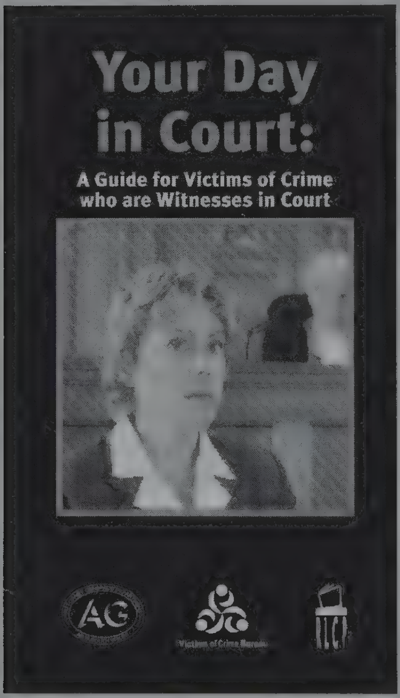
COURTS AND VICTIMS

Victims come into contact with courts in various ways. As witnesses, they may have to give evidence against a defendant. As injured parties, they may have other concerns, including a wish to tell the court about the effect of the crime or claim compensation for the injuries that they sustained. In this section, we examine how courts have responded to the perceived needs of victims in these two rather different roles.

Victims as witnesses

If victims are called to appear in court, this can pose several problems for them. They may have to take time from work, find someone to look after their children, make travel arrangements and then wait for long periods in the court building before being called as a witness. Once inside the courtroom, they take part in an unfamiliar contest conducted in a formal language that may seem quite alien. They may have to relive a traumatic experience in front of the offender, have their credibility challenged, and have their character come under repeated attack.

Not surprisingly, victims who take part in a trial often find the whole process intimidating. Studies undertaken in Victoria by the Victorian Community Council Against Violence (1994), Western Australia by Meredith Wilkie, Anna Ferante and Nina Susilo (1992) and South Australia by Julie Gardner (1990) have discovered that victims were dissatisfied and unhappy with, or upset by, what had happened to them in court. Some of the problems identified included: having to confront the offender in court or encounter the offender or the offender's family and friends in waiting rooms, corridors, toilets or at the entrance to the court. Victims were also upset by having to hear the full details of the offence or deal with the attitude of the defence counsel. Other victims resented the amount of time that they had to spend waiting in court as well as the facilities offered to them while they were there.



Information booklet and video created for victims of crime who are due to appear as wintesses in New South Wales courts

Source: Victims of Crime Bureau, New South Wales Attorney General's Department

Concerns about the ability of victims to follow court proceedings have prompted several jurisdictions to try to improve the information that they give to victims.

Many victims *do* want to know what is going on and why. As a result, if the prosecution wants a victim to cooperate, it makes sense to provide her or him with any information he or she might need. In most jurisdictions, victims are given brochures that explain the trial process. Some jurisdictions, such as South Australia and the Northern Territory, employ someone to provide support to victims in court. These people tell victims about their rights, explain the way the court runs, let victims know when they need to be in court and assess whether they need an interpreter or counselling. During the trial, the support officer may sit with the victim and help liaise with the prosecutor. Afterwards, he or she might help victims deal with any concerns that they have about the trial. In some places, the role of court companion is filled by voluntary organisations such as Court Network in Victoria and Victims Support Service in South Australia.

Victims have many of the same needs as other witnesses. In many States, however, victims have been granted further rights that are unlikely to be made available to other witnesses and these will be discussed in the next part of this chapter.

The logo of the South Australian Director of Public Prosecution's Witness Assistance Service

Source: Office of the Director of Public Prosecution, South Australian Attorney General's Department

Victims as injured parties

In common law, the job of the prosecution is to prove that an offence has occurred. Sometimes, as in the case of assault causing actual bodily harm, it may be necessary to establish that the offender caused some injury to the victim. However, in many other instances the court does not need to know how much or even whether harm was caused to the victim in order to determine whether or not the defendant is guilty. The chances of this information coming out in court are reduced substantially if the defendant pleads guilty. As a result, some victims complain that they have been robbed of their day in court — the court never gets to hear their story. In addition, many judges accept that they may not have sufficient information about the consequences of a crime in order to reach a proper sentence.

One way of providing victims with an opportunity to become involved in the sentencing process is through the use of the *victim impact statement* (VIS). The VIS contains details about injuries suffered by victims as a result of an offence. Several major issues would need to be resolved before a VIS can become an uncontested part of criminal justice systems in Australia. The first issue focuses on the purposes of punishment. Those who support the use of VIS argue that the statements will allow sentencers to take into account the level of harm caused to the victim when assessing the degree of weight to be placed on retribution as a factor in sentencing. Those who oppose the use of VIS point out that there is a danger of placing too much weight on retribution so that the sentence becomes a form of vengeance rather than a form of justice.

The second issue relates to the degree of satisfaction that a victim might obtain from participating in the criminal justice system. Advocates of the VIS suggest that use of the statement might aid the victims' healing and encourage victims to co-operate with the criminal justice system. Opponents argue that victims are more concerned with the sentence than with whether they are heard or not. They also point out that the VIS may create unrealistic expectations among victims that they may be able to have an effect on the kind or length of the sentence, an expectation that may more often than not lead to disappointment and frustration. Finally, some opponents of the VIS claim that victims may find the process of providing a statement traumatic, especially if they are then cross examined in court on what they have said. Advocates argue that the process is actually helpful to victims and that victims are rarely cross-examined on the statement.

The third issue is one of court procedure. Some opponents of VIS have claimed that the use of VIS may create yet another burden for the criminal justice system leading to further delays and greater expenses for the state as well as for the defendant. Proponents of the measure point out that this has simply not happened in the States where the VIS has been introduced and that, even if it did add to court costs, a VIS should be allowed to ensure that we have a just and fair legal system.

The VIS has been introduced on a State-by-State basis and, in some cases, entrenched through legislation: South Australia passed in 1988, s7 of the *Criminal Law (Sentencing) Act*. Equivalent legislation emerged in the Australian Capital Territory and Victoria in 1994, Western Australia in 1995 and New South Wales in 1996. Under changes to legislation in Queensland and the Northern Territory in 1995, the VIS may also be allowed in those jurisdictions. The VIS is also used in Tasmania although there is no statutory provision for this (Tasmanian Law Reform Institute 2003).

While it seems probable that all States and Territories in Australia now accept the use of the VIS, different States use the VIS in different ways. The various jurisdictions allow different groups of people to call themselves victims for the purpose of the VIS. At its most narrow, the only people whose victimisation might be considered could be those against whom an offence was directly committed who suffered injury as a result. However, in the Australian Capital Territory, some witnesses or people who assisted the police in the arrest are also seen as possible victims. In Victoria and Western Australia, victims may include organisations and institutions while in Queensland, Western Australia, Victoria, South Australia and New South Wales, the definition encompasses the immediate family of someone who has been murdered (Booth 2000).

In some jurisdictions, a VIS takes the form of a special written report that prosecutors give to the judges. However, in some States — including the Northern Territory, South Australia and Western Australia — the VIS may be given orally by the victim in court. Evidentiary rules and laws on the relevance and admissability of evidence apply to the VIS (O'Connell 1999). Consequently, authors of a VIS may be cross-examined in court. Several victims in Victoria have complained about the difficulties that they face when cross-examined on their statement without the aid of their own lawyer.

The VIS may contain victims' own assessments of the effects a crime has had on them. In some States it may also include assessments written by counsellors, social workers or psychologists. In Victoria, victims generally complete the VIS without professional assistance. This might not meet the needs of illiterate, non-English speaking or multiple victims. In South Australia, victims may choose to write a statement themselves or they can receive help in preparing their VIS from the investigating police officer, trial prosecutor or a counsellor. Depending on the jurisdiction, the VIS may be given to a judge prior to sentencing or be used by victims to obtain compensation or restitution.

The first Australian State to take an interest in the VIS was South Australia. In that State, the statement can include information about the physical, financial, physiological, emotional, social or psychological impact of victimisation. The statement is submitted in court by the prosecution, if the offender is found guilty, so that judges can take into account the effect of the crime on victims while deciding on a sentence. In 1994, the effects of VIS in South Australia were evaluated by the South Australian Office of Crime Statistics. Edna Erez, Leigh Roeger and Frank Morgan (1994) interviewed lawyers, surveyed over 400 victims of crime and analysed sentencing outcomes in the higher courts. Erez, Roeger and Morgan discovered that the VIS appeared to have reduced some victims' feelings of helplessness in the face of the court system. Some judges also welcomed the introduction of the victim's statement. However, while VIS may have been a popular innovation among victims and judges, Erez, Roeger and Morgan found that the introduction of the VIS had had almost no impact on overall patterns of sentencing, though it might have improved the information available to the judge when sentencing (Erez 1999).

Of course, it is not clear that the VIS was ever introduced as a way of changing sentencing practice. Unfortunately, this has not always been explained to victims. As a result, while tendering a VIS to the sentencing judge may play a part in the healing process of many victims, if victims feel that they are being hoodwinked then this contribution may turn out to be of minimal significance or may even be counterproductive.

The VIS may also have a role to play in another part of the court proceedings that concerns victims. In the next part of this chapter, we examine what happens when the victim applies for compensation.

Dialogue Box 18.1

Victim Impact Statement, Attempted Murder Victim, South Australia

Immediately following my attempted murder by John [my husband] I needed to take leave of absence from my [work] due to the stress and fear I was under. My children and I slept at different friends' houses for the first weeks after the incident as I was fearful for our lives.

Bail conditions and restraining order were imposed to prevent John coming near me. I returned home after the locks on our house were changed to prepare the house for an immediate sale to be free to live somewhere unknown to John. I took extra precautions to protect myself and my children should John come after me. However, he broke bail and bail conditions had to be made stricter.

I have now moved to a small rental house with my two girls.

I have had and continue to have nightmares about the car exploding. It took me about two months before I was able to drive to town along the same road without shaking as I relived what my husband did.

The need to sell the house urgently to be able to move somewhere where I felt safer has caused great financial loss. It will take me years and years to get back on my feet.

It was necessary to change Rebecca's kindergarten and subsequent schools that she was preparing to attend.

I increased my working days this year from 2.5 to 4 days per week to start helping to get myself financially independent. This forced Sarah into more day care than I ever would have liked for my child. My children have been working with a child psychologist to help them deal with the changes in their lives.

I have received counselling from the Victims Support Service and my counsellor believes that the impact of the crime hasn't really hit me yet. My way of coping has been to distance myself from the fact that my own husband whom I loved and thought would be the person to always protect me, actually tried to kill me. So far my mothering instincts to protect and care for my children have kept me going. My trauma will probably impact greater after the trial.

When I sat in court on Tuesday and watched my husband speaking I looked at him expecting to see a sad man ready to break down and apologise for what he has done. Instead I saw a face I don't know any more who stared at me (when the jury left) with intense hate and evil. That look chilled me and made me realise that my expectations of him showing remorse are now gone. I believe that my husband's reasons for trying to kill me still exist, that is, to have the children live with him permanently and I therefore believe that I will continue to live in fear of him.

If I was to determine the outcome of this ordeal it would be my wish that my husband pleads guilty to attempting to murder me and then apologises to myself and all the people who have been traumatised by what he did and all those to whom he has since lied. It would then be necessary for him to have enforced psychiatric counselling for many years.

If the above scenario is not an option then I believe mine and my children's lives are still in danger and that steps necessary to keep my children and I safe should be enforced. I need to have John out of my life so that I can get on with rebuilding a safe and happy future for myself and my children.

Yours sincerely – Lisa

All Australian criminal justice systems have mechanisms for providing victims of crime with *compensation*, restitution or reparation. Most have decided that an offender should pay compensation to a victim either as part of a sentence imposed by a court or as one condition of a probation order.

The idea that an offender should be responsible for paying compensation has been supported on the grounds that: it publicly acknowledges her or his wrongdoing; helps rehabilitate the offender; encourages the offender to offer some concern for the victim, and relieves the state of some of the burden of caring for the victim. However, from a victim's perspective, there are two major practical difficulties. First, the court has to know who the offender was. Secondly, the offender needs to have or be able to make enough money to pay adequate compensation to a victim.

If all victims are to be compensated adequately, then the state needs to provide some form of safety net. For the victim, the most efficient way of gaining relief from the damage caused by crime would be a state funded scheme. Such a scheme would deal with claims from all victims and would then be responsible for retrieving what money it could from those offenders who can be located and are in a position to pay.

The first state scheme to compensate victims of violent crime was established in New Zealand in 1963. The United Kingdom followed in 1964, New South Wales in 1967, South Australia in 1969 and Victoria in 1972. At the moment, all Australian States have *criminal injury compensation schemes*. These are funded by confiscating offenders' assets, fines or special levies imposed on offenders or, where necessary, from general taxation.

The various schemes operate in divergent ways, using different eligibility criteria, levels of compensation, means of assessment or decision-making bodies. The kinds of injuries covered also vary widely. In Western Australia and Queensland, a victim may be compensated for injuries involving "bodily harm (including pregnancy), mental and nervous shock". In Tasmania, South Australia and Victoria a victim may obtain compensation for "pain and suffering". In South Australia, a victim is covered for "grief", though this category is expressly excluded from the Northern Territory scheme. In the Northern Territory, victims can also gain compensation for loss of enjoyment of life. The cost of some schemes trebled between 1987 and 1997 (Freckelton 1997). This was the result of improved publicity, greater involvement of lawyers, increasing generosity by courts, and the growth of claims based on newly acknowledged post-traumatic stress. Consequently, we may be heading towards greater uniformity as some States cut back their schemes by limiting payment to "deserving" victims or portraying payments as offering a gesture of support rather than full compensation. In the late 1990s, Victoria (1996) and the ACT (1999) dramatically reduced payment for "pain and suffering" (see Dare 2002 for a more recent assessment of ACT compensation levels). In 1996, New South Wales also reduced the categories of eligibility. However, it is difficult to predict future trends — in 2000, the new ALP government in Victoria retreated from some of the provisions of the 1996 Act. In a comprehensive review of the field, Freckelton (2001) portrayed the current state of criminal injuries compensation as one of "readjustment", and we may continue to see States attempting to reduce payments while avoiding public condemnation for dramatic cuts in provision.

Dialogue Box 18.2

Australian Capital Territory, Matter Number 114/99, award made under the Criminal Injuries Compensation Act 1983.

The applicant, an 18 year old male, was the victim of an armed robbery when he was held up by three men while walking home from Civic [the centre of Canberra] in the evening. The man demanded money from the applicant and pulled him to the ground. He was struck across the head across the left eyebrow with a blunt heavy object. One of his assailants cut him on the back of his left hand with a knife, injuring the extensor tendons to the left little and ring fingers. He underwent surgery to repair three tendons which had been severed. Three or four stiches were also put into the cut above his left eye. His arm was put in a hand cast for one month and his hand and lower arm were then placed in a splint for a further three months. Movement in the hand was slow to recover and physiotherapy was required. There is permanent scarring on the face and hand. In June 1999, $13,000 was awarded for pain and suffering, $13,565 overall.

In December 1999, the Australian Capital Territory amended its scheme to remove the possibility of financial compensation for pain and suffering, except in extreme circumstances.

There are other possible sources of compensation for a victim. Victims may be able to receive compensation if they have insurance to cover such an eventuality, or if they can sue someone else who can be found to have been negligent in allowing the crime to occur. Another possible source of compensation might be through a process of *victim-offender mediation.*

Again, different jurisdictions use different programs. In New South Wales, the program operates before the case reaches court. If the attempt at mediation is successful, then the court does not intervene. In Queensland, some mediation occurs after a case proceeds to court but before the trial takes place. In Western Australia, Victoria and Queensland, mediation may be ordered by the sentencing judge or magistrate and only takes place after an offender pleads or is found guilty. Sentencing is postponed and may take into account the results of the mediation process. In Western Australia and New South Wales, mediation can also take place before an offender is released from prison. In some cases, mediation may lead to an offender apologising, offering to pay compensation, returning or repairing property, or spending time working for the victim or performing community service. Of course, mediation may only be appropriate in the case of some victims, some offenders and some offences. It appears to be most likely to succeed: if the offender and victim have a continuing relationship within which neither party is dominant; where there is only a moderate degree of conflict; where both sides want to reach agreement and wish to do so through mediation, and where neither side takes a stand on a question of principle. *Family conferencing* is another way of resolving crime by bring offenders and their victims together and we discuss this in Chapter 12.

In the 1980s and early 1990s, several studies found that victims had been distressed by what had happened in court. Since then, courts have tried to meet the needs of victims by providing better information, offering the support of a social worker, developing new ways of giving victims a chance to have their stories heard in court, and granting compensation. Although it is the police, courts and prosecuting authorities who have made the greatest effort to respond to the perceived needs of victims, correctional services have also made some moves in the same direction and we turn to this in the next section.

CORRECTIONS AND VICTIMS

Victims have several reasons to be interested in the work of correctional services: some want protection through the incapacitation, or rehabilitation of offenders, others want restitution, and a further group may want revenge.

Some victims are keen to keep track of the location of offenders. If victims know an offender is still in prison, then they may be less worried about repeated victimisation or even having to face reprisal for reporting the crime or giving evidence against the offender. If victims do not know when an offender is due to be released, they might find it difficult to prepare themselves for future encounters with the offender. However, there may be reasons for not releasing information about prisoners to victims. Offenders and their families should have the right not to be harassed or threatened by victims or relatives of victims and should be allowed to return to a normal life once they have been punished for their crime. It is difficult to find a balance between these two competing rights.

Some Australian jurisdictions have now given victims the right to find out when an offender is due for release. In South Australia, victims have the right to be advised of an offender's impending release from custody. Tasmanian victims of personal violence or sexual assault also have this right. All victims in New South Wales and victims of personal or sexual assault in Queensland have the right to request and receive information about an offender's impending release or escape from custody, as well as any change in security classification that allows an offender to be left outside prison unescorted (*New South Wales Victims Rights Act* 1996; Currie & Kift 1999). In Western Australia, victims may also be told where an offender is planning to live.

Despite this, some jurisdictions have been slow to provide legislation to allow this information to be released or organise systems to ensure that information is sent out to victims at appropriate times. South Australia took 11 years to establish a way for victims to register their desire to find out information about the progress of an offender through correctional services. By 2000, 264 victims had registered with Correctional Services (South Australian Department for Correctional Services 2000). However, some victims have complained that they have not been informed of offenders' movements (Rice 2001).

The amount of time that a prisoner actually spends in prison may depend on the decision of a Parole Board. While many States now accept that victims should know when offenders are to be released, most draw the line at giving victims some say in the matter. There are exceptions. The *New South Wales Victims Rights Act* 1996 and the *Sentencing Amendment (Parole) Act* 1996 gave victims the right to make submissions to the body responsible for granting parole to a serious offender or altering a prisoner's security classification in such a way that he or she would become eligible for leave from prison without an escort.

Of course, not all offenders are sent to prison. Victims have a very real interest in supporting the development of community-based corrections (see Chapter 16) in which offenders, supervisory staff and agencies were held to a high level of accountability. Assessments of offenders could take into account the needs of victims: the risks of re-victimisation; the difficulties caused by failure to tackle problems of mental health, substance abuse, dysfunctional relationships and unemployment; and, the ability to pay restitution. Unfortunately, in Australia the impact of non-custodial sentences on victims has rarely been explored.

In South Australia, the Department for Correctional Services has established a Victim Awareness program that might be used as part of the rehabilitation of offenders who have either been sentenced to prison or a supervised or parole order. The program is designed to help offenders understand the harmful results that their actions have had on other people — participants have to complete a VIS for their own offence — and to find a way of making restitution. If the victim is likely to welcome contact, this might mean apologising to their victim. However, it might also involve writing a letter to a victims' organisation and making a commitment to not reoffending.

Some offenders may also be victims of crime. Many prisons provide counselling or psychological services. Prisoners who have been victims of crime either inside or outside the prison may make use of these services. In Victoria, Fairlea prison has employed a sexual assault counsellor to provide individual counselling for those female prisoners who have been victims of sexual assault. In South Australia, several victim support organisations have offered help to prisoners who have been victims of crime, though there has been some concern that these organisations might find that they have a conflict of interest if they are helping the very people who victimised other clients of the organisation.

Sometimes, prisoners have been abused before they went to prison. Sometimes they are victimised within prison and it is to this possibility that people may be victimised by the criminal justice system that we now turn.

DialogueBox 18.3

The release of Fred Many

The amount of time that offenders actually spend in custody is rarely seen as an issue that concerns victims. Occasionally, however, the early release of a particularly notorious offender can be used by interested parties to promote a debate on how long offenders should be kept out of society. One such debate occurred in 1995 during the New South Wales State Election campaign.

In 1995, Fred Many was released from prison in Sydney after serving eight years and six months for raping, assaulting and attempting to murder a 15 year-old girl on the New South Wales Central Coast in 1986.

Apparently, Many continued to threaten the girl while he was in jail and she was forced to change her name and move overseas. At Many's sentencing hearing in 1988, the judge declared that Many had "never shown a glimmer of contrition for the awful wrong which he has done... his record is appalling and leaves one with a sense of despair." However, Many's sentence was reduced because of information that he gave to the police and prison authorities while in prison. This led to mounting pressure placed on the government by the popular media to stop Many's release in 1995.

Despite the Premier's attempts to calm the situation, the debate caused by Many's release led to a bidding war between the Liberal/National Coalition government and the Labor opposition. Which side could be tougher on crime? Both parties deliberately launched their law and order policies in the presence of the families of murder victims, publicly exploiting the families' grief. As Don Weatherburn, Director of the New South Wales Bureau of Crime Statistics and Research, had told the *Sydney Morning Herald*: "It's been a perennial thing in NSW politics for the Opposition to attack the Government on law and order policy and for the Government to defend itself by introducing tough law and order policies." (*Sydney Morning Herald* 12/3/95)

VICTIMS OF THE CRIMINAL JUSTICE SYSTEM

Most reports on the place of victims in the criminal justice system treat victims and offenders as two distinct categories: offenders are rarely considered victims, and the possibility that victims might become offenders is overlooked. Yet, many offenders have been victims, and many other people become victims solely as a result of their contact with the criminal justice system. In this section, those people who may be regarded as victims of policing, of the courts and of corrections are considered.

Police victimisation

There is plenty of evidence that unarmed, unthreatening citizens have been seriously assaulted by police officers. Numerous reports by police complaints authorities, ombudsmen and non-government organisations, as well as research by criminologists, have documented the use of excessive force or harassment by police around the country (for example, Alder 1991; Human Rights and Equal Opportunity Commission 1991; Victorian Deputy Ombudsman Police Complaints 1993; Amnesty International; 1996; Chan 1997). In some, but by no means all, of the best-known cases, the targets of police violence have been Indigenous Australians (Human Rights and Equal Opportunity Commission 1991; Amnesty International 1997; Cunneen 2001). The response by police to complaints has also been criticised in a report published by the Aboriginal and Torres Strait Islander Commission (Cunneen & McDonald 1997).

Victimisation in court

Literature on victimisation pays little attention to the possibility that people who are not already the victim of a crime might be victimised by courts. However, there is a substantial body of literature on miscarriages of justice (Carrington, Dever, Hogg, Bergen & Lohrey 1991). A miscarriage of justice occurs when someone is convicted of crime that he or she did not commit. We might know this to be the case because the actual offender later confesses, old evidence is reassessed, or new evidence comes to light. In 1989, Paul Wilson found that nine Australian cases had been officially acknowledged as falling into this category. He also found another 10 cases that seemed to fall into this category, but had not been officially acknowledged.

Victimisation in prison

Again, work on prisons rarely considers the problems faced by prisoners who are victimised either by other inmates or by prison officials. In 1993, the Independent Commission Against Corruption (ICAC) examined the use of informers in the New South Wales prison system. The report (1993, p vii) found that there was a good "deal of violence, some actual and much threatened, between prisoners. And history shows that warders are sometimes very violent towards prisoners." The report examined a series of incidents several of which involved beatings, stabbings or murders of prisoners.

It is difficult to say how widespread violence and other forms of victimisation are in prisons. However, what we do know is alarming. David Heilpern reported the results of a survey of 183 male prisoners in New South Wales (Heilpern 1995; 1997). Almost 50% of those surveyed claimed that they had been assaulted. Twenty four per cent stated that they had been sexually assaulted, some repeatedly. Ten female prisoners were also surveyed, with three reporting experiencing occasional sexual assault, and five occasional general assault.

In this section, we have examined the way that the work of different parts of the criminal justice system — police, courts and corrections — can in itself cause victimisation. If victimology is to examine the position of victims within the criminal justice system, it must take seriously the victimisation of people by the criminal justice system.

CONCLUSION

Over the last 20 years, significant changes have taken place in the way that criminal justice systems deal with victims. Responding, in part, to the growth of a "victims lobby", police, prosecutors, courts and correctional service institutions have all taken steps to provide better information, support and access for victims. The shifts that have occurred have been uneven across and between jurisdictions, institutions and different groups of victims.

Even where there has been a shift in policy in favour of providing support for victims, that policy has not always been followed by all parts of all agencies responsible for implementation. Some agencies have responded by creating performance targets, establishing complaints mechanisms and monitoring how they are used, and by disciplining employees who fail to abide by institutional regulations. In 1996, the New South Wales government responded by creating a Victims of Crime Bureau within the Attorney General's Department. This is staffed by social workers and has responsibility for providing information to victims, monitoring the policy of various criminal justice bureaucracies on victims, overseeing the implementation of the statutory Charter of Victims' Rights, co-ordinating victim support and dealing with victim's complaints.

The increasing interest in victims that has been displayed by criminal justice systems around the world has been applauded by some commentators (Maguire & Shapland 1990). However, other writers are far more sceptical and believe that victims and victim lobbyists have been "largely co-opted, and politically manipulated" (Elias 1996, p 10) by government institutions (Phipps 1988; Elias 1993; Harding 1994). As a consequence, Elias has argued for changes in the role undertaken by victimologists. Instead of taking the victim's side against the offender, researchers should be taking the victim's side against, what Elias considers to be a far more significant barrier to the victim's well-being, officials and the state.

This means that people with an interest in improving the treatment of victims by the institutions and personnel that make up our criminal justice systems should be prepared to look beyond official rhetoric. It also means that research should pay more attention to the ways that people are victimised by the state and by the criminal justice system.

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QUESTIONS

For any one group of victims, trace the way members are treated by the criminal justice system. You could, for instance, chose to examine a particular group of people (such as people with disabilities, people from a particular ethnic or racial background) or the victims of a particular crime (such as burglary, racist violence, corporate crime, police violence).

1. How have they been handled by the police?
2. How have they been dealt with by the courts?
3. Do correctional services take any interest in them?
4. Is there any evidence that their victimisation is caused by the criminal justice system?
5. Why might victims be dissatisfied with criminal justice in Australia?
6. What changes would you make in the criminal justice systems in Australia to stop secondary victimisation?

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USEFUL WEBSITES

International

www.virlib.ncjrs.org/VictimsOfCrime.asp
National Criminal Justice Reference Service, Victims Homepage (US)

Statistics of Victimisation

www.abs.gov.au/
ABS Statsite

Victims' Rights

www.women.tas.gov.au/resources/information/victims.html
Tasmania

www.sa.gov.au/agencies/agd/CrimeBooklet_complete.pdf
South Australia

Police

www.nt.gov.au/pfes/police/usergde/victims_of_crime.htm
NT Police

Victim Compensation

www.jcs.act.gov.au/eLibrary/annual_reports.html
Australian Capital Territory Criminal Injuries Compensation Scheme Annual Reports

www.jcs.act.gov.au/eLibrary/OtherReports/AVCACT.pdf
Assistance for Victims of Crime in the Australian Capital Territory

www.fitzroy-legal.org.au/ctyrepts/crimecpn.htm
Fitzroy Legal Services Report on Victorian Crimes Compensation Tribunal

www.justice.qld.gov.au/courts/about/compo.htm
Department of Justice and Attorney-General Compensation for Victims of Crime, Queensland

www.parliament.vic.gov. au/lawreform/
Victorian Parliamentary Report on Restitution

www.magistratescourt.vic. gov.au/text/victoms2.htm
Victorian Victims of Crime Assistance Tribunal

Victim Support Services

www.justice.qld.gov.au/courts/about/victims.htm
Department of Justice and Attorney-General Victim Support, Queensland

www.vocaq.asn.au/
Victims of Crime Association, Queensland

www.victimsa.org/
Victim Support Services, SA

www.tased.edu.au/tasonline/lifeline/voc.htm
Lifeline, Tasmania

www.justice.tas.gov.au/legpol/annual report_00-01/ar00-01.htm
Support and Compensation for Victims, Department of Justice and Industrial Relations, Tasmania

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Victims of Crime Coordinator, ACT

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Department of Justice Victims Support, Victoria

www.justice.vic.gov.au/
Review into Services for Victims of Crime, Victoria

AUSTRALIAN CRIME AND JUSTICE ONLINE

Australian Institute of Criminology
www.aic.gov.au/

Australian Institute of Criminology's links to Government Sites
www.aic.gov.au/links/government.html

Australian Institute of Criminology's links to Australian Correctional Agencies
www.aic.gov.au/research/corrections/agencies.html

Australian Institute of Criminology's links to Australian Policing Agencies
www.aic.gov.au/policing/auspol.html

Australian Institute of Criminology's links to Criminal Justice Statistics
www.aic.gov.au/stats/index.html

Federal, State, Territory and Local Government
www.nla.gov.au/oz/gov/

Federal, State and Territory Courts and Legislation
www.nla.gov.au/oz/gov/leg.html

United Kingdom Home Office Research Development and Statistics Directorate
www.homeoffice.gov.uk/rds

United States National Criminal Justice Information Service
www.ncjrs.org

United States National Institute of Justice International Center
www.ojp.usdoj.gov/nij/international

United Nations Crime and Justice Information Network
www.uncjin.org/index.html

Other Sources of Information on Crime and Justice in Australia

Australian Criminology Database (CINCH) is produced by the Australian Institute of Criminology and is a bibliographic database that indexes and abstracts articles from published and unpublished material on all aspects of crime and criminal justice from 1968 onwards. Source documents include journal articles, monographs, monograph chapters, conference papers, government documents, book reviews and theses. CINCH is available through most university libraries.

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www.australianacademicpress.com.au/Publications/anzjc/crim1.html

Current Issues in Criminal Justice: The contents pages of this journal are available online.
www.australianacademicpress.com.au/Publications/anzjc/crim1.html

Trends and Issues in Crime and Criminal Justice: Full text online.
www.aic.gov.au/publications/tandi/index.html

GLOSSARY

Following the definition, the number in brackets is the chapter in which the term appears in the text. Items in bold in the definition refer to terms defined elsewhere in the glossary. Students may also wish to refer to the following dictionaries:

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Nygh, P & Butt, P (eds) 1998, *Butterworths Concise Australian Legal Dictionary*, 2nd ed, Butterworths, Sydney.

Aborigine see **Indigenous**.

Accountability The capacity to be held responsible for one's actions or statements. (13)

Admission An incriminating statement made by a suspect with respect to some aspect of the offence or offences under investigation. (14)

Anomie Societal disorganisation and a sense of normlessness that often accompanies rapid social change. (5)

Antisocial behaviour Behaviour in children and adolescents which, while not necessarily criminal, interferes with their ability to form relationships and learn. (4)

Arrest The deprivation of a person's liberty to go where he or she pleases. Technically an arrest involves words of arrest, physical touching by the arrestor of the arrestee and submission to the arrest by the arrestee. (14)

Capitalism The mode of economic production which has its main features the realisation of profit, the private ownership of goods and services, and the buying and selling of commodities on the open market. (5)

Child abuse *Child sexual abuse* is any act which exposes a child to, or involves a child in, sexual processes beyond her or his understanding or contrary to accepted community standards; *child physical abuse* is any non-accidental physical injury inflicted upon a child by a carer; *child emotional abuse* is any act by a carer that results in a child suffering significant emotional deprivation or trauma; *systems abuse* is harm done to children in the context of policies or programs that are designed to provide care or protection. (9)

Child neglect Any serious omissions or commissions by a carer which, within the bounds of cultural tradition, constitute a failure to provide for the healthy physical and emotional development of a child. (9)

Civil/criminal law distinction In a criminal matter, the state defines itself as the wronged party and the offence generally has to be proven "beyond reasonable doubt". A civil matter is conceptualised as a private dispute, where one party brings an action against another, and the case is decided "on the balance of probabilities". Much corporate illegality is regulated by civil not criminal law. (8)

Classical conditioning Learning in which a neutral stimulus (bell) acquires the ability to produce a response (salivation) that was originally produced by a different stimulus (food). (4)

Cognitive disengagement theory A series of cognitive strategies that enables individuals to inflict suffering on others with a clear conscience. (4)

Cognitive skills programs Interventions for offenders which attempt to change problem solving and other cognitive deficits. Originally devised in Canada. (16)

Cognitive-behavioural interventions Interventions based on psychological methods which focus on changing patterns of thinking. (16)

Colonisation The powers and practices used by a colonial authority over the original inhabitants and the ongoing effects of those practices, such as the social and economic marginalisation of Indigenous Australians and the distortion of their culture. (9)

Committal proceeding Also called a preliminary hearing, it is a preliminary determination before a magistrate of whether there is a sufficient evidence – a case to answer – to warrant a trial in relation to more serious charges (see **indictable offence**). (14)

Community corrections Non-custodial supervision of offenders. (16)

Computer crime See **digital crime**. (10)

Computer security Systems and processes, hardware and software, that prevent unauthorised access to computer systems and the information they contain. (10)

Confession A complete acknowledgment of guilt by a suspect. (14)

Crime as proto-revolutionary activity The idea (often held by Marxists) that many types of crime should be viewed as either consciously or unconsciously contributing to the overthrow of the dominant political and economic order. (5)

Crime control model Term coined by Herbert Packer (1968) to refer to a model of criminal justice whose primary value is efficiency and whose primary function is to control crime by apprehending and convicting those who commit crime. See also **due process model**. (12)

Crime incidence rate A rate that measures the number of offences (occurrences, or incidents) per person regardless of the distribution of those offences. See also **crime prevalence rate.** (2)

Crime prevalence rate A rate that measures the number of victims or offenders per head of population in a given time period. A **crime incidence rate** of ten offences per hundred people could reflect one person experiencing ten offences – a prevalence rate of 1% – through to ten persons each experiencing one offence – a prevalence rate of 10%. (2)

Crime prevention Term applied to a wide range of strategies, programs and techniques aimed at reducing crime and its impacts. (17)

Crime Prevention Through Environmental Design (CPTED) Oscar Newman coined this term in the early 1970s to describe planning and architectural design techniques for reducing crime. (17)

Crime rates Rates of crime are calculated over a given time period, usually a year and are usually rated per head of population. Other rates may be measured *per dwellings* (for household burglary rates) or *per motor vehicles* (for motor vehicle theft rates). See also **crime incidence rate** and **crime prevalence rate.** (2)

Crime surveys These surveys ask random **samples** of the population to respond to structured questionnaires about crime victimisation. Also known as victimisation surveys. (2)

Criminal injuries compensation schemes Statutory schemes under which Australian States provide financial support for victims of crime. (18)

Criminal justice as confidence game Phrase coined by Abraham Blumberg (1967) to refer to the amicable rather than adversarial relations between defence lawyers and prosecutors in guilty plea negotiations. The goal of the "game" is generally for the defence lawyer, the prosecutor, and sometimes the judge or magistrate as well, to persuade the defendant to plead guilty rather than to insist on their right to a trial. (12)

Criminalisation A socio-legal process by which certain acts are defined and labelled as crime. (1)

Criminogenic needs Characteristics of the offender which influence the likelihood of them offending. (16)

Cyber crime See **digital crime**. (10)

Cyberspace The communications domain comprised of electronic mail, the world wide web, and the convergence of computers and communications generally. (10)

Dark figure This figure consists of all those occurrences that could be defined as crime according to some criteria, but are not recorded in the statistical collection of interest. Statistics derived from crime surveys have their own dark figure as well as those derived from police records. (2)

Defendant A natural person or corporation who has been charged before a court with one or more criminal offences and brought before the court to face the charges. (14)

Desert-based sentencing Modern form of retributive (backward-looking) punishment where the penalty structure is to reflect ordinal proportionality (that is, as offences become more serious, so too should the penalties) and where the absolute level of punishment is to be in proportion to the harm. See also **indeterminate sentencing**. (12)

Digital crime Criminal activity involving digital technology as the instrument and/or as the target. May also involve the incidental use of digital technology in furtherance of criminal activity, for example electronic storage of records of criminal transactions or digital communications in furtherance of ordinary criminal conspiracies. Often used synonymously with **computer crime** or **cyber crime**. (10)

Discourse The social process of making and reproducing sense. Discourse refers to both the product of social, historical and institutional formations and the languages that are produced from them. (3)

Discretion Decision-making power of legal and criminal justice officials to interpret law and administrative rules. The ability to choose between options in a particular situation. (12, 13)

Displacement Success in reducing opportunities at specific locations and times may simply deflect crime rather than eliminating it. Displacement can be to another location, another type of offence or another time. (17)

Dispositive decision A decision in the criminal process about the disposal of a case; this is primarily sentencing, but also includes diversion from court. Dispositive decisions are guided by values of proportionality and crime prevention or reduction. See also **processual decision**. (12)

Distributional power A distributional understanding of power that sees power as finite and divided between individuals and groups. In this understanding, some possess power while others (the powerless) do not. See also **relational power**. (8)

Diversion Some offenders may be diverted from the usual judicial processes, usually into a treatment program of some sort. Mentally-disordered offenders and drug-related offenders, for example, are often diverted in some jurisdictions. (16)

Domestic violence Forms of abuse perpetrated mainly by men against women in a relationship or after separation, including, but not limited to, physical and sexual violence, threats and intimidation, emotional, social and financial abuse. It involves one partner seeking to dominate and control the other. (9)

Due process model Term coined by Herbert Packer (1968) to refer to a model of criminal justice whose primary value is reliability and whose primary function is to ensure that crime is controlled in a lawful manner and that citizens are not subject to abuses of state power. See also **crime control model**. (12)

Economic rationalism A doctrine that states the market is the most important factor in determining whether organisations and actors are efficient and effective. (15)

Effect size A statistical measure of the degree of impact of a program. (16)

Elder abuse Psychological abuse (or mental anguish), physical abuse, sexual abuse, neglect or economic abuse of an older person. This may include words or deeds that demean the person, prevent them from exercising appropriate control over their own affairs, reduce their capacity to live their lives with dignity, fail to provide an appropriate standard of care, or the illegal or improper use of an older person's money, property or other assets. (9)

Embeddedness A characteristic of harms by powerful individuals and organisations. Such actors can exploit economic and political structures so that the harm they cause is either seen as an inevitable by-product of business activity, or is impossible to eradicate without causing extensive problems to innocent parties. (8)

Encryption Methods of scrambling the content of communications to render it unintelligible to all but the intended recipient. (10)

Enforcement pyramid A schema for regulatory authorities to organise their enforcement efforts proposed by John Braithwaite (1993), who argues that the best compliance results from using persuasion in the first instance, and only resorting to punitive methods once persuasion fails. (8)

Environmental prevention Initiatives to reduce crime by modifying physical environments. Environmental prevention often works by trying to *reduce opportunities*. As a broad term, environmental prevention encompasses a number of specific schools, which include **Crime Prevention Through Environmental Design**, **Routine activity theory** and **Situational crime prevention**. (17)

Ethnicity see **Race**.

Executive modification of sentences This occurs when sentences are shortened in accordance with statutory provisions by officials from the executive rather than the judicial arm of government. (15)

Extradition The process whereby one country seeks the hand-over of a person by another country in order to facilitate criminal prosecution of that person. (11)

Factual guilt Initial determination by a police officer or prosecutor that a person committed a crime, based on witness and other evidence. (12)

Failed states/weak states Nation-states (that is, countries) in which one or more of the key institutions of government (legislature, executive, judiciary, public services) do not function at all, or only to a limited extent, due to problems of internal conflict, inadequate resources, corruption, or gross mismanagement. (11)

Family violence The term preferred by many Aboriginal and Torres Strait Islander communities to refer to a wide range of abusive behaviours committed by groups or individuals against relatives in Indigenous communities. The term may be used to distinguish a preference for holistic, community-based solutions. The term is also used by some researchers, especially those who do not focus on gender relations, to refer to violence within the home in non-Indigenous communities. (9)

Fear of crime The concerns or fears that people express about the potential or imagined impact of crime on themselves. (7)

Financial Action Task Force (FATF) The Financial Action Task Force on Money Laundering, formed in 1989, is an intergovernmental body whose purpose is the development and promotion of policies to combat money-laundering. (11)

Forensic psychology The application of psychological knowledge to the legal and justice systems. (4)

Gender The social and cultural dimensions attributed to each sex. (5)

Global village The idea that the world has shrunk as a consequence of modern communications, new mass transportation etc, bringing people from around the world into contact with each other, either virtually or actually. (11)

Guideline judgment A judgment of an appeal court which sets out the considerations relevant to a particular type of offence including which matters are aggravating or mitigating and which may suggest an appropriate range for a particular offence or weight to be given to a factor. (14)

Hegemony Term derived from the work of Antonio Gramsci (1891-1937), whereby the interests of the most powerful in society are attained by exerting a consensus and convincing subordinate groups that such practices are natural, legitimate and are in their own interest. (3)

Home detention Confinement of offenders to their residence as part of a sentence in the community. (16)

Ideology A theoretical concept and an active practice. It means making sense of the world through particular (often class-based) perspectives. Like **hegemony**, ideology suggests that there are no "natural" meanings inherent in an event, object or language or its **representation**. To understand the meaning we have to understand the social contexts that produced and reproduced those meanings. (3)

Indeterminate sentencing The dominant form of sentencing in common law countries from the latter part of the 19th century to the latter part of the 20th century. Based on the rehabilitative ideal, the sentencer announced an indefinite length of incarceration time, and release from prison was decided by parole boards and putatively based on the individual's "own exertions". See also **desert-based sentencing**. (12)

Indictable offence A more serious offence that can be tried before a judge and jury. Less serious indictable offences may also be tried summarily by a magistrate (see **summary offence**). (14)

Indigenous Generically means to have "originated in a particular region"; as applied to human populations, refers to a country's first-recorded human societies. In Australia, the term is used synonomously with "Aboriginal" peoples, a term coined by 18th century British and European colonists to describe Australian Indigenous people, whom they sought to control and conquer. In other countries, Indigenous people may collectively call themselves First Nations (Canada) or Native American (the United States) people, as well as refer to more specific identities based on tribal, regional, linguistic or clan groups. (6, 9)

Inequality A relative measure that compares those who are least well off with those being less well off (also disadvantage). (6)

Informal justice A variety of practices that give a central role to citizens (not just legal professionals) and to methods of responding to crime that directly engage victims, offenders, and the community. Examples include **victim-offender mediation** and reconciliation programs, community boards, and community justice centres in the 1970s and 1980s, and forms of **restorative justice** in the 1990s and first decade of 2000. (12)

Information security Systems and processes, hardware and software or *code*, that prevent unauthorised access to information regardless of the medium on which it is stored. (10)

Institutionalist approaches to measuring crime Approaches that assume that crime has a meaning only in terms of organised social responses to it. Institutionalists believe that all measurement efforts have their own selective properties, which should not be described as biases. See also **realist approaches to measuring crime**. (2)

Intermediate sanctions Sanctions imposed by the court which are midway between imprisonment and community supervision. (16)

Intersectionality Multiple inequalities where the categories are not fixed nor additive but interactional. (6)

Justice system as funnel (or leaky sieve) The idea that the number of cases within the criminal justice system diminishes as matters progress from the stage of crime being reported through arrest, prosecution, trial, conviction and sentencing. Cases drop out due to factors such as insufficient evidence and the exercise of **discretion** by officials within the criminal justice system. (12)

Legal guilt Determination by a judicial officer (or jury) not only of the defendant's factual guilt, but also that the state has acted legally in obtaining evidence and proving its case. (12)

Malestream criminology The notion that criminological thought has been, and to a large extent still is, constrained by masculinist assumptions about crime, its definition, its causes, and possible modes of prevention. (5)

Mandatory penalty A penalty which the sentencer is required by law to impose as opposed to one the sentencer has a **discretion** to impose. (14)

Meta-analysis A statistical method that allows a reviewer to summarise the findings of a series of studies. (16)

Modernity Period spanning the Enlightenment until around 1945 which viewed human reason, the scientific method, and western modes of organising government and economy as the key means of perfecting "man" and society. (5) See also **postmodernity**.

Money-laundering The steps taken to disguise the illegal origins of crime proceeds, usually performed by moving the funds through a series of bank accounts in a number of countries. (11)

Moral development theory Theories about the processes by which children develop an understanding of right and wrong. (4)

Moral panics Disproportionate and hostile social reaction to a condition, person or group defined as a threat to collective values, involving stereotypical media representations and leading to a demand for greater social control and creating a spiral of reaction. (3)

New managerialism A management philosophy based on the idea that management is scientific and should solely be concerned with outcomes suggesting an efficient and effective organisation. (15)

Operant conditioning Learning in which the consequences (reward or punishment) that follow some behaviour increase or decrease the likelihood of that behaviour occurring again. (4)

Parole The portion of a sentence served in the community after a prison term has been completed, usually on a conditional basis. (16)

Pathology The scientific study of disease and its nature, causes and context. When we pathologise behaviour we take behaviour that deviates from normal and scientifically describe it as a disease or illness. (4)

People smuggling Moving people illegally across national borders in order to make a profit from doing so. See also **people trafficking**. (11)

People trafficking Moving people illegally across national borders in order to make a profit from doing so, but also exerting duress over the people in order to exploit them once they have landed in the country of destination (for example, through sexual slavery, forced labour). See also **people smuggling**. (11)

Performance outcomes Objective measures, such as the number of escapes, that can provide information on whether programs are effective and efficient. (15)

Plea bargain Term applied to negotiations between the prosecution or police and the defendant whose aim is to achieve pleas of guilty in exchange for some benefit with respect to the charges laid or sentence. (12, 14)

Plea in mitigation Speech made by the offender or her or his counsel which provides information and suggestions to the judge in relation to the offender and offence with the aim of achieving the best outcome for the offender. (14)

Police An organised, trained body of persons dedicated to the prevention of crime, enforcing the law, and the maintenance of order. (12, 13)

Police-recorded crime rates Rates based on the official records of crime submitted by police officers, either in response to victim complaints or to behaviour that they discover themselves. (2)

Policing The activity of maintaining order, preventing crime, and enforcing the law. (13)

Popular culture The culture of and appealing to ordinary people. The term usually has pejorative connotations because it tends to be used in opposition to notions of high culture, taste and artistic merit. (3)

Postmodernity Period beginning around 1950 that defines itself in opposition to Enlightenment ideas about human nature, social progress and science (see **modernity**). Postmodernity is characterised by an ongoing scepticism of the validity and usefulness of these concepts in resolving political, cultural, social, legal and other problems. In criminology, this has led, for example, to the view that no single voice or body should occupy a privileged position when thinking about problems of crime and criminal justice. (5)

Poststructuralism A mode of critical inquiry arising in the 1960s that examined the relationship between language (words) and reality (world). Poststructuralist writers are concerned, among other things, to point out that what counts as "truth" or "knowledge" has more to do with the rhetorical effects of language than with any permanent or absolute state of affairs existing "out there". For some criminologists, this is an important point because it enables a closer examination of the way in which certain texts (such as law, psychological profiles, crime prevention leaflets) build a particular image of enforcement officers, offenders and victims which is open to question and debate. (5)

Poverty An absolute measure of having few material goods and limited access to services. (6)

Probation A sentence carried out in the community under supervision by a Probation Officer or Community Corrections Officer. (16)

Processual decision A decision about the processing of the case from initial charge through to trial; this includes police procedures in questioning suspects and gathering evidence, and prosecutorial decisions on what charges to lay. Processual decisions are guided by values of legality and equality before the law. See also **dispositive decision**. (12)

Psychiatrist A medical doctor who has specialised in psychiatry. Psychiatrists focus on the treatment of *abnormal* behaviour. As they tend to view mental disorders as diseases they treat the disease with drugs. (4)

Psychoanalysis A form of psychotherapy based on the idea that each of us has an unconscious part that contains ideas, memories, desires or thoughts that have been hidden because they are dangerous to our self-concept. Treatment of mental disorders focuses on the therapist's helping the patient to identify and resolve her or his unconscious conflicts. (4)

Psychology The scientific study of behaviour and mental processes. (4)

Public order crimes Offences that involve prohibited forms of public behaviour, including public drunkenness, begging, vagrancy, disorderly behaviour, and using insulting, obscene or threatening language. (7)

Public/private dichotomy The notion that social life is divided into public and private domains and that important differences, especially in legal responses, arise from designating something as either public or private. (6, 9)

Race Refers to socially and historically constructed categories and identities, which can be linked to skin colour, physical appearance, culture and nation. Racial or ethnic categories and identities are better understood as a *means* of group formation rather than a *cause* of it. They are actively constructed without clear origins or consistent elements; for example, in the 19th century, race referred to nations (for example, the "German race") and religious groups (the "Jewish race"). Race/ethnicity as a set of biologically-based or physical categories for human populations does not exist, but many people cling to ideas of a physical essence of race/ethnicity, and racial/ethnic classification and counting are core elements of the state's and criminologists' analyses of human populations. (3, 6)

Realist approaches to measuring crime Approaches based on the assumption that there is an *objective* or *real* level of crime independent of our methods of measuring it. Realists use terms like *bias* when measurement efforts fall short of the mark. See also **institutionalist approaches to measuring crime**. (2)

Regulation of cyberspace The ways access to and use of the convergence of communications and computers are regulated. These include relevant activities of government and private institutions, as well as technologies, hardware and software. (10)

Regulatory authority Term coined by Nancy Reichman (1998) to describe the ways in which powerful individuals and organisations ensure that their harmful behaviour is seen as acceptable or "normal", and as a consequence, not defined as criminal. This theoretical term is different from the descriptive term, *a regulatory authority*, which is a governmental body charged with enforcing standards. (8)

Rehabilitation Originally referred to attempts to return imprisoned offenders to living successfully in the community. At present the term usually refers to attempts to prevent future offending through the implementation of a program of some sort. (16)

Reintegrative shaming Term coined by John Braithwaite (1989) to describe an alternative method of responding to crime: denounce the act (shaming), but at the same time, support and encourage an offender to become a law-abiding member of society (reintegration). See also **stigmatising shaming**. (12)

Relational power A relational understanding of power sees power as flowing through relationships and interdependencies between individuals and groups. Power is exerted by exploiting these interdependencies. See also **distributional power**. (8)

Relative deprivation A perceived measure of having less than those in similar circumstances. (6)

Representation The process of putting into concrete forms an abstract ideological concept, for example, the representation of women, youth, police, criminals. It has political consequences as a representation tends to be used to refer to all individuals in a group such as, for example, Asian youth. (3)

Responsivity The extent to which an intervention takes account of the particular characteristics and learning styles of the group of offenders being targeted. (16)

Restorative justice Umbrella concept that refers to a variety of practices, which normally bring victims and offenders and their supporters together to discuss an offence and its impact, give a greater role to non-legal participants, and emphasise offender accountability for the offence and making reparations to a victim. (12)

Retributive punishment A backward-looking form of punishment that focuses on the crime and relates the amount of punishment to the degree of blameworthiness for the crime. The major forms of modern retributive punishment are **desert-based sentencing** schemes, including those for prison and fines. (12)

Risk principle Delivering intervention programs to those offenders who have the highest risk of re-offending. (16)

Routine activity theory A theory that highlights the convergence of three elements necessary for the occurrence of a predatory crime – a likely offender, a suitable target, and the absence of a capable guardian. In most situations ordinary citizens, rather than police or security personnel, are the capable guardians who discourage crime. (2, 6, 17)

Sample A part of the population used to gain information about the whole. (2)

Secondary victimisation People may be adversely affected by a crime itself (primary victimisation) or by the way that others, including criminal justice agencies, respond to the primary victimisation (secondary victimisation). (18)

Sentencing options The variety of sentences open to a judge or magistrate in considering a particular case. (16)

Sex/gender A term that combines both the biological sex and the socio-cultural features of gender. (6)

Situational crime prevention Attempts to reduce specific forms of crime by manipulating the immediate contexts in which they occur. Situational prevention is based on the theory that, at the instant an offence is committed, relevant individuals make *rational choices* based on assessment of efforts, risks and rewards. Situational prevention tries to change the decision-making calculus by increasing perceived efforts and risks and reducing rewards and rationalisations. (17)

Social contract Sixteenth century philosophical approach that assumed that people were selfish and if everyone pursued her or his own interests, society would be very unpleasant. Consequently, the state is granted the rights to use force to protect an individual's rights. (4)

Social harm Injuries or damage inflicted on societies and their institutions. (1, 5)

Social learning theory A theory that focuses on the learning that occurs within a social context. It considers that people learn from one another, including such concepts as observational learning, imitation, and modelling. (4, 5)

Social reactionism A sociological perspective that considers crime to be the product of formal (for example, police, courts, prisons) and informal (for example, family, peers, media) responses to such activity. (5)

Status degradation ceremony Term coined by Harold Garfinkel (1956) to describe the regular court process, which communicate to the defendant that he or she is an "outsider" and of a lower social status than other members of society. See also **reintegrative shaming**. (12)

Stigmatising shaming Type of shame that is communicated in a status degradation ceremony, where both the act and the person is denounced. See also **reintegrative shaming**. (12)

Stolen generations The name applied to the Indigenous people of Australia who, as children, were forcibly removed from their families in accordance with laws, policies and procedures of government. (9)

Street crime The most visible component of crime, especially crime that takes place in public places. (7)

Subculture A group of people who share similar beliefs and lifestyles which deviate from those of mainstream society. (5)

Summary offence A less serious offence than an **indictable offence**, a **summary offence** is tried by a magistrate not by a judge and jury. Less serious indictable offences may also be tried summarily by a magistrate. (14)

Tabloid journalism Usually a pejorative term to describe sensationalist content and style of narration in both print and electronic media. The term indicates material that typically values drama, confrontation and the personal over "impartiality", "objectivity" and more public, informational content. (3)

Typology A method by which some commentators try to dispel ambiguity surrounding the concepts of white-collar and corporate harm. Varied harms are classified according to criteria such as type of actor (individual/organisation), nature of harm (financial/physical), and target or victim (corporate/public). Typologies can be extensive and fine-grained, but the contested nature of white-collar crime means that it eludes neat categorisation. (8)

Victim Impact Statement (VIS) A way for victims to make a personal statement to the court about the impact that a crime has had on them. (18)

Victim-offender mediation An **informal justice** procedure involving a victim and offender that aims to identify ways that an offender may repair the harm caused to the victim by the offence. **Restorative justice** grew out of early victim-offender mediation programs. (12, 18)

Victims' Charter A government attempt to set out the rights of victims of crime and establish an integrated framework of good practice that runs across all agencies of the criminal justice system. (18)

Victims' lobby Organisations and individuals who call for legal and social change on the basis of the perceived needs of victims. Definitions of the needs of crime victims may be open to political manipulation. (18)

Visceral A term often employed in **postmodern** criminological work which points to the importance of examining the lived, emotional or sensorial aspects of crime. (5)

Voir Dire A "mini-trial" within a trial to determine the admissibility of evidence. (14)

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